



INVITATION FOR BID

DEQ Contract No.: 507023

Return bids to:

Department of Environmental Quality
Permitting and Compliance Division
Environmental Management Bureau, P.O. Box 200901
1520 East Sixth Avenue, Helena, MT 59620-0901

Sealed bids will be received up to 2:00 P.M., Thursday, May 10th, 2007
To be then publicly opened by Department of Environmental Quality personnel.

Mark lower left corner of envelope:

DEQ Contract No.: **507023**

Opening Date: **May 10th, 2007**

INVITATION FOR BID

ISSUED BY: **WARREN McCULLOUGH**
Environmental Management Bureau

CONSTRUCTION SPECIFICATIONS, DRAWINGS, AND BIDDING DOCUMENTS
Project Name, County:

ZORTMAN ALDER GULCH DUMP PROJECT PHILLIPS COUNTY, MONTANA

FOR STATE OF MONTANA
DEQ - PERMITTING AND COMPLIANCE DIVISION, ENVIRONMENTAL MANAGEMENT BUREAU

Designers/Engineers:

SPECTRUM ENGINEERING
1413 4th Avenue North
Billings, Montana 59101
Phone: 406-259-2412

BID FORM, Section 2.1

BID SECURITY

CONTRACTOR PERSONNEL and PROPOSED PROJECT APPROACH, Section 2.2

CONTRACTOR QUESTIONNAIRE and OWNERSHIP INFORMATION, Section 2.3

MONTANA CERTIFICATE OF CONTRACTOR REGISTRATION, ITB Section 19.1

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BIDDER'S
CHECKLIST

CONTACTOR NAME: _____

PHONE: (____) _____

Set #

STANDARD TERMS AND CONDITIONS

QUALIFICATIONS

Owner shall evaluate the qualifications of each prospective Bidder to determine if he or she is a "responsible bidder," a person fully capable in all respects to perform the contract requirements with the integrity and reliability which assures good faith performance. Section 18-4-301(8), MCA. No contract will be awarded to a "nonresponsible bidder." Any determination of "nonresponsibility" shall be made in accordance with Section 18-4-308, MCA, with ARM 2.5.407 and with the terms of the Instructions to Bidders.

CONTRACT AWARD

Owner intends to award this contract to the lowest responsive and responsible Bidder. Section 18-1-102, MCA

BID CANCELLATION / REJECTION OF BIDS

An invitation for bids or other solicitation may be canceled and any or all bids may be rejected in whole or in part when it is in the best interests of the State of Montana. Section 18-4-307, MCA.

PROTEST PROCEDURE

Bidders may protest a solicitation or award of a contract determined to be in violation of law. The protest must be in writing and explain in detail all of the protester's objections. A protest involving the solicitation or award of a contract must follow the provisions of Section 18-4-242, MCA. Owner is under no obligation to delay, halt or modify the procurement process due to a protest.

VENUE

Any claim or dispute arising out of an express contract entered into with the State of Montana shall be governed by the laws of Montana. The parties agree that any litigation concerning such claim or dispute must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Section 18-1-401, MCA. Each party shall pay its own costs and attorneys fees.

SETTLEMENT PROCEDURES AS CONDITIONS PRECEDENT TO SUIT

The informal (paragraphs 4.03, 9.04, 9.08) and formal (paragraphs 9.09 and 10.05) settlement procedures set forth in the General Conditions are the Owner's contractual, administrative procedures under Section 18-1-402, MCA, for settlement of any question, claim, dispute or other matter arising between Owner and Contractor under the Contract Documents.

Under the General Conditions, Engineer's informal and formal decisions shall be conditions precedent to any exercise by Owner or Contractor of such rights and remedies as either might otherwise have under the Contract Documents or at Law or in Equity with respect to any question, claim, dispute or other matter arising under the Contract Documents.

MINE WASTES

Mine waste, especially mill tailings, often consists of saturated, fine-grained material which will require specialized handling techniques. Both active and passive dewatering techniques are usually necessary prior to and during material handling. Payment for costs associated with mine waste excavation, handling and dewatering shall only be made to the extent provided in Special Provisions, Measurement and Payment.

CONTRACT TERMINATION

Owner shall have the absolute right to terminate the contract in whole or in part pursuant to Article 15 of the General Conditions.

CONTRACT REFERENCE

The DEQ Contract number shall be referred to on all invoices, pay requests, contract forms, correspondence and any other documents relating to Work to be done under the contract.

ASSIGNMENT, TRANSFER & SUBCONTRACTING

Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the Owner. Section 18-4-141, MCA.

CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities or specifications shall be granted without Owner's prior written consent. Supplies delivered which do not conform to the contract terms, conditions and specifications may be rejected and returned at Contractor's expense.

UNAVAILABILITY OF FUNDING

Owner at its sole discretion may terminate or reduce the scope of the contract if available funding is reduced or is otherwise for any reason not available. Section 18-4-313, MCA.

COLLUSION PROHIBITED

Bidder's signature on this bid guarantees the prices quoted have been established without collusion with other eligible bidders and without effort to preclude the State of Montana from obtaining the lowest possible competitive price.

LEGISLATIVE CHANGES

The 1999 Montana Legislature made changes to laws affecting construction contracts. Topics relate to payment of contractors and subcontractors (Section 18-2-123, MCA), minimum requirements for bids (Section 18-2-303, MCA), final acceptance/payment (Section 18-2-306, MCA) and contract retainage (Section 18-2-316, MCA).

SECTION I:

Information for Bidders

SECTION 1

1.1 INVITATION FOR BID

CALL FOR BIDS

Sealed bids, entitled Bid for Zortman Alder Gulch Dump Project, addressed to the Montana Department of Environmental Quality, Permitting and Compliance Division, Attn: Wayne Jepson, P.O. Box 200901, 1520 East Sixth Avenue, Helena, MT 59620-0901 will be received until 2:00 P.M. local time, May 10, 2007, and then publicly opened and read thereafter.

PROJECT LOCATION

The Zortman Alder Gulch Dump Project is located at the Zortman Mine, Sections 7 and 18, T25N, R25E, in Phillips County, Montana.

PROJECT WORK DESCRIPTION

Bids will be received for one General Contract. The work will consist of, but is not necessarily limited to, providing all labor, materials, earthwork, and incidentals necessary to complete the work in accordance with the contract documents.

Work shall consist of, but not be limited to: mobilization and demobilization; stripping coversoil; waste dump regrading; subgrade compaction; placement of owner-provided liner; placing coversoil, revegetation, ditch repairs and modification; and disposal of debris.

The project will include all incidental work necessary to complete the project as specified in the Contract Documents.

CONTRACT DOCUMENTS

Contract Documents may be obtained from Spectrum Engineering, 1413 4th Avenue North, Billings, MT 59101, (406) 259-2412 ext 3 after April 12th, 2007, for a non-refundable deposit of \$50, in advance, in cash or check payable to Spectrum Engineering.

Contract Documents, including any addenda, will be available for viewing at the Builder's Exchanges identified in the Instructions to Bidders.

QUESTIONS

For general questions, contact Wayne Jepson (406-444-0529). All questions about the meaning or intent of the Contract Documents are to be submitted in writing to and must be received by the Montana Department of Environmental Quality (DEQ), Permitting and Compliance Division, P.O. Box 200901, 1520 East Sixth Avenue, Helena, MT 59620-0901, Attention: Wayne Jepson, no later than May 4th, 2007. Responses to questions will be mailed no later than May 8th, 2007.

CONTRACT TIME

The Contract Time will be 140 consecutive calendar days. The Contractor will pay Owner liquidated damages in the amount of Seven Hundred Fifty (\$750.00) dollars per day for each day beyond the Contract Time (as adjusted in accordance with the terms of the Contract Documents) that the work is not substantially complete.

PRE-BID CONFERENCE

There will be a pre-bid walk-through at the project site (meeting in front of the Zortman Garage and Motel) at 1:00 P.M., May 1, 2007. Attendance at the Pre-Bid is mandatory for Contractors who intend to submit a bid for this Project. **Failure to attend the Pre-Bid is a basis for Owner to reject the Bid under Article 11 of the Instructions to Bidders.**

BID SUBMITTAL

Bids shall be submitted in accordance with Instructions to Bidders and with the laws of the State of Montana.

All workers employed in performance of the project work shall be paid prevailing wages at rates required by Federal regulation and the laws of the State of Montana.

Contractors must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin.

Owner reserves the right in its sole discretion, to cancel the contract solicitation for this project, to reject any and all Bids, to postpone or refuse to award the contract, to consider the Bid of another Bidder, to waive any and all informalities, and to take any other action it deems in the best interests of the State of Montana.

The Montana Department of Environmental Quality is an equal opportunity employer.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____ Richard Oppen
Director

SECTION 1

1.2 INSTRUCTIONS TO BIDDERS

OWNER: The Montana Department of Environmental Quality

CATEGORY OF IMPROVEMENTS: Mine Reclamation

CONTRACT TITLE: Zortman Alder Gulch Dump Project

CONTRACT NUMBER: DEQ Contract No. 507023

ARTICLE 1. QUALIFICATIONS OF BIDDERS

1.1 Bidders may be investigated by Owner to determine if they are qualified to perform the work. All Bidders shall be prepared to submit within five days of Owner's or Engineer's request, such information and data as Owner and Engineer request in order to make this determination.

1.2 The investigation of a Bidder will seek to determine whether the organization possesses the ability to perform successfully under the terms and conditions of the proposed agreement, is authorized to do business in Montana, has sufficient relevant experience, whether the financial and technical resources available to the Bidder are adequate to assure Owner that the work will be completed in accordance with the terms of the Agreement, and whether the Bidder meets the other criteria identified in Article 12 below. In making this determination, full consideration will be given to such matters as Bidder's integrity, compliance with public policy, and record of past performance. The amount of other work to which the Bidder is committed may also be considered.

1.3 In evaluating Bids, Owner will consider the qualifications of only those Bidders whose Bids are determined by Owner to be in compliance with the requirements set out in these Instructions to Bidders.

ARTICLE 2. COPIES OF CONTRACT DOCUMENTS

2.1 Complete sets of Contract Documents shall be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

2.2 Owner and Engineer in making copies of Contract Documents available do so only for the purpose of obtaining Bids on the work and do not confer a license or grant for any other use.

2.3 Contract Documents may be obtained from Spectrum Engineering, 1413 4th Avenue North, Billings, Montana 59101, (406) 259-2412 ext 3, for a non-refundable deposit of \$50 in advance, in cash or check payable to Spectrum Engineering.

2.4 Contract Documents including any addenda will be available for viewing at the following locations:

Department of Environmental Quality
Environmental Management Bureau
1520 East Sixth Avenue
Helena, MT 59620

Phone - 406-444-0529

Spectrum Engineering
1413 4th Avenue North
Billings, MT 59101

Phone – 406-259-2412

Montana Contractors' Association
1717 11th Avenue
Helena, MT 59601
Or
P.O. Box 4519
Helena, MT 59604

Phone - 406-442-4162

Builders' Exchange
2016 A Gilkerson Drive
Bozeman, MT 59715

Phone - 406-586-7653

Great Falls Builders' Exchange
1625 3rd Avenue North
Great Falls, MT 59403

Phone - 406-453-2513

Missoula Plans' Exchange
201 W. Russell
Missoula, MT 59801

Phone - 406-549-5002

Billings Builders' Exchange
2050 Broadwater Ave., Suite A
Billings, MT 59102

Phone - 406-652-1311

Northwest Montana Plans Exchange
2303 Highway 2 East
Kalispell, MT 59901

Phone - 406-755-5888

Butte Builders' Exchange
1230 Harrison Ave.
Butte, MT 59701

Phone - 406-782-5433

ARTICLE 3. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

3.1 Before submitting a Bid, each Bidder should (a) examine the Contract Documents thoroughly; (b) visit the site to identify and become familiar with any local conditions that may in any manner affect cost, progress or performance of the work; (c) identify and consider all federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress, or performance of the work; and (d) study and carefully correlate Bidder's observations with the requirements of the Contract Documents.

3.2 Detailed information concerning the site is identified in the Drawings, Special Provisions and Technical Specifications in the Project Manual (and/or attachments thereto).

3.3 Before submitting its Bid each Bidder may, at its own expense, make such additional investigations and tests as the Bidder may deem necessary to determine its Bid for performance of the work in accordance with the time, price and other terms and conditions of the Contract Documents.

3.4 On request, Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of its Bid.

3.5 The lands upon which the work is to be performed, rights-of-way for access thereto and other lands designated for use by Contractor in performing the work are identified in the Contract Documents.

3.6 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he/she has complied with every requirement of this Article 3 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

ARTICLE 4. INTERPRETATIONS AND ADDENDA

4.1 For general questions, contact Wayne Jepson (406-444-0529). All questions about the meaning or intent of the Contract Documents are to be submitted in writing to and must be received by the Montana Department of Environmental Quality (DEQ), Permitting and Compliance Division, P.O. Box 200901, 1520 East Sixth Avenue, Helena, MT 59620-0901, Attention: Wayne Jepson, no later than May 4, 2007. Responses to questions will be mailed no later than May 8, 2007.

4.2 Written clarifications or interpretations will be issued by Addenda not later than five days before the Bid opening date. Only questions answered by formal written Addenda will be binding. Oral and other clarifications or interpretations will be without legal effect. Addenda will be on file in the office of the Owner at least 5 days before the Bids are opened and will be mailed via overnight delivery to all parties recorded as having received the Contract Documents from DEQ.

4.3 It shall be the Bidder's responsibility to make inquiry as to the Addenda issued and to ensure that it has obtained all such Addenda prior to submitting a Bid. All such Addenda shall become part of the Contract Documents and all Bidders shall be bound by such Addenda.

ARTICLE 5. PRE-BID CONFERENCE

5.1 There will be a pre-bid walk-through at the project site at 1:00 P.M. on May 1, 2007. Attendees shall meet at the Zortman Mine Office at the end of the main street of Zortman behind the Zortman Garage and Motel. Attendance at the Pre-Bid is mandatory for Contractors who intend to submit a bid for this Project. The DEQ will make reasonable accommodations for persons with disabilities who wish to participate in the pre-bid conference walkthrough. A person in need of said accommodation should contact DEQ to advise of needed accommodation no later than April 27, 2007. **Failure to attend the Pre-Bid is a basis for Owner to reject the Bid under Article 11 of the Instructions to Bidders.**

ARTICLE 6. BID SECURITY

6.1 Each Bid must be accompanied by cash, bid bond, or other form of bid security specified in 18-1-203, Montana Code Ann., payable to Owner. If a bid bond is used, it shall be substantially in the form attached to these Instructions to Bidders. Any bond which is signed by an agent, including an attorney-in-fact, must be accompanied by a certified copy of such agent's authority to act on behalf of the surety. The Bid Security shall be not less than 10% (ten percent) of the Total Contract Price indicated on the Bid Form. No Bid will be considered unless it is accompanied by the required Bid Security. All Bid Securities except those of the three lowest responsible and eligible Bidders will be returned within five days, Saturdays, Sundays, and legal holidays excluded, after opening of the Bids. All Bid Securities will be returned upon the execution of the Agreement or, if no award is made, within 60 days after the actual date of opening of the Bids, unless forfeited under the conditions herein stipulated.

6.2 In case a party to whom a Contract is awarded shall fail or neglect to execute the Agreement and deliver to Owner the required bonds within the time specified in Article 13 of these Instructions to Bidders, Owner may determine that the Bidder has abandoned the Contract. In such case the Bid Forms and acceptance shall be null and void and the Bid Security accompanying the Bid Form shall be forfeited to Owner as liquidated damages for such failure or neglect and to indemnify said Owner for any loss which may be sustained by failure of the Bidder to execute the Agreement and furnish the bonds as aforesaid. If the Owner actually contracts for the performance of the work with another party, the amount forfeited to Owner shall not exceed the amount by which the Bid Price of said Bidder was less than the amount for which the Owner legally contracts with the other party to perform the work. Otherwise, the Bidder's bid security is absolutely forfeited in the full amount of the bid security. In case of death, disability, or other unforeseen circumstances affecting the Bidder, such Bid Security may be returned at the Owner's discretion. After execution of the Agreement and acceptance of the bonds by Owner, the Bid Security accompanying the Bid Form of the Successful Bidder will be returned.

ARTICLE 7. PERFORMANCE, PAYMENT, AND OTHER BONDS

7.1 Performance, Payment, and other Bonds shall be provided in accordance with Article 5 of the Conditions of the Contract. The acceptable forms of Performance Bond and Payment Bond are attached to these Instructions to Bidders.

7.2 All Bonds required as Contract Security shall be furnished with the executed Agreement.

ARTICLE 8. BIDS

8.1 Each Bid shall be submitted on the forms provided and in accordance with the Contract Documents, including these Instructions to Bidders. All Bids must be regular in every respect and no interlineation, alteration, or special condition shall be made or included in the Bid by the Bidder.

8.2 Each Bid shall include the following: (1) Bid Form, Section 2.1; (2) Bid Security; (3) completed Contractor Personnel and Proposed Project Approach, Section 2.2; and, completed Contractor Questionnaire and Ownership Information, Section 2.3. Bids omitting any of these shall be deemed nonresponsive. The remainder of the Contract Documents need not be submitted with the Bid.

8.3 Bid Forms shall be completed in ink or by typewriter. All blank spaces for Bid prices must be filled in with the unit price for the item or the lump sum for which the Bid is made. The Bid price of each item on the form shall be stated in both words and figures. If unit prices are required on the Bid Form, discrepancies between unit prices and their respective total amounts will be resolved in favor of the unit

prices. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Erasures or alterations must be initialed by the Bidder in ink.

8.4 Each Bid shall be signed by the individual authorized to submit the Bid and authorized by that submission to agree to perform the Contract if the Bid is accepted. If the Bid Documents specify the individual required to sign and submit the bid, the bid must comply with this requirement.

8.5 Bids by corporations shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

8.6 Bids by partnerships shall be executed in the partnership name and signed by a partner, whose title shall appear under the signature. The official address of the partnership shall be shown below the signature.

8.7 All names shall be typed or printed below the signature.

8.8 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

8.9 The contact person and address to which communications regarding the Bid are to be directed shall be shown.

8.10 Each Bid shall be submitted in a sealed opaque envelope bearing on the outside the name of Bidder, its address, and entitled **Bid for Zortman Alder Gulch Dump Project**. If forwarded by mail, the Bid and sealed envelope marked as described above shall be enclosed in another envelope with the notation "SEALED BID ENCLOSED" on the face of the outer envelope and addressed as indicated below. Bids may be mailed or hand delivered to:

Department of Environmental Quality
Permitting and Compliance Division
Attention: Wayne Jepson
P.O. Box 200901
1520 East Sixth Avenue
Helena, Montana 59620-0901

ARTICLE 9. RECEIPT OF BIDS

9.1 Sealed Bids will be received at the office of the Montana Department of Environmental Quality, Lee Metcalf Building, at the address indicated above, until **2:00 p.m., local time, May 10, 2007**, and then publicly opened and read thereafter. Bid opening will occur in the Lee Metcalf Building's Conference Room 43.

9.2 Owner may consider any Bid not prepared and submitted in accordance with the provisions hereof to be nonresponsive.

9.3 Bidders are cautioned that it is the responsibility of each individual Bidder to assure that its Bid is in the possession of the responsible official or his/her designated alternate prior to the stated time and at the

place of the Bid opening. Owner is not responsible for Bids delayed by mail and/or delivery services, of any nature.

ARTICLE 10. MODIFICATION AND WITHDRAWAL OF BIDS

10.1 Bids may be modified only by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the scheduled time for the opening of Bids.

10.2 Bids may be withdrawn by written, telegraphic, or faxed notification received by the Owner by the time fixed for opening, provided that Owner may, in its discretion, disregard any telegraphic or faxed withdrawal and accept the related Bid, if an original, signed withdrawal is not received by Owner within two working days following the Bid opening. The Bid Security of any Bidder withdrawing his Bid in accordance with the foregoing conditions shall be returned as provided in these Instructions to Bidders.

10.3 Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw its Bid after the scheduled time for public opening of the Bids.

ARTICLE 11. OWNER'S RIGHT TO REJECT ANY AND ALL BIDS

11.1 Owner reserves the right in its sole discretion, to cancel the contract solicitation for this project, to reject any and all Bids, to postpone or refuse to award the contract, to consider the Bid of another Bidder, to waive any and all informalities, and to take any other action it deems in the best interests of the State of Montana. The reasons therefor must be made a part of the contract file. This reservation of rights to reject any and all bids, specifically includes, but is not limited to:

- 11.1.1 The right to disregard and reject any and all Bids the Owner determines are not in compliance with the requirements set out in these Instructions to Bidders.
- 11.1.2 The right to disregard and reject any and all Bids the Owner determines to be untimely, nonconforming, nonresponsive or conditional.
- 11.1.3 The right to disregard and reject any unbalanced Bid, a Bid which includes for any item a Bid Price that is abnormally low or high.
- 11.1.4 The right to reject the Bid of any Bidder the Owner determines to be unqualified under Article 1 above.
- 11.1.5 The right to reject any Bid if the evidence submitted by, or the investigation of, such Bidder fails to satisfy Owner that such Bidder is properly qualified and likely to carry out the obligations of the Contract Documents and to satisfactorily complete the work contemplated therein.
- 11.1.6 The right to reject the Bid of any Bidder the Owner determines is not a responsible bidder under Article 12, paragraph 12.1.
- 11.1.7 The right to reject the Bid of what appears to be the lowest qualified Bidder, after the Bid opening and prior to the award of the contract, if, after a conference under Article 12, paragraph 12.4, Owner determines:

- a. the Bidder failed to Owner's satisfaction to adequately address the factors enumerated in Article 1 and in Article 12;
- b. The Bidder does not appear to be in a position to properly undertake and satisfactorily complete the work; or,
- c. The Bidder has not properly familiarized itself with the Contract Documents.

11.1.8 The right to reject the Bid of what appears to be the lowest qualified Bidder, if, after submitting a list (under Article 12, paragraph 12.3) of all Subcontractors it expects to use in the work and after due investigation and reasonable objection to any proposed Subcontractor, the apparent low bidder declines to make a substitution.

ARTICLE 12. AWARD OF CONTRACT

12.1 If it is to be awarded, the Contract will be awarded to the lowest responsible and eligible Bidder (Successful Bidder) without regard to residency. Federal procurement regulations prohibit the use of statutorily or administratively imposed geographical preferences in the evaluations of bids or proposals. Such a Bidder shall possess the skill, ability, and integrity necessary for the faithful and complete performance of the work. The term "lowest responsible and eligible Bidder" as used herein shall mean the Bidder whose Bid is the lowest of those Bidders possessing the demonstrated skill, ability and integrity necessary for the faithful and complete performance of the work and meeting all other requirements set forth herein. To be considered a responsible Bidder, the Bidder must have:

- (1) Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
- (2) Resources to meet the completion schedule contained in the Agreement;
- (3) A satisfactory performance record for completion of agreements;
- (4) Accounting and auditing procedures adequate to control property, funds and assets, as required in 43 CFR § 12.60; and
- (5) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other applicable requirements of the Agreement.

12.2 If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 30 calendar days after the actual date of the opening of the Bids. All Bids shall remain open for 30 days after the date of the opening of the Bids but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

12.3 Within five working days after Bids are opened, the apparent low Bidder, and any other Bidders so requested, shall submit a list of all Subcontractors it expects to use in the Work. An experience statement with pertinent information as to similar projects and other evidence of qualification shall be furnished for each named subcontractor, if requested by Owner. If Owner or Engineer after due investigation has reasonable objection to any proposed Subcontractor, it may before giving the Notice of Award request the apparent low Bidder to submit an acceptable substitute. If the apparent low Bidder declines to make any such substitution, Owner may elect not to award the contract to such Bidder, but Bidder's refusal to substitution will not constitute grounds for forfeiture of Bid Security. Any Subcontractor so listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer. Contractor shall not be required to employ any subcontractor against whom he has reasonable objection. The use of subcontractors listed by the Bidder and accepted by Owner prior to the Notice of Award will be required in the performance of the Work, unless Owner otherwise agrees in writing.

12.4 The Bidder submitting what appears to be the lowest qualified Bid will be required to meet with Owner and Engineer within seven days after the Bid opening and prior to the award of the contract for the purpose of discussing pertinent details pertaining to the proposed Agreement. The following points will be considered in particular:

- a. The Bidder's qualifications under the criteria identified in Articles 1 and 11 above.
- b. The Bidder's organization and equipment available for work and the Bidder's proposed sources of materials.
- c. The Bidder's financial status and ability to execute the contract and perform the work.
- d. The Bidder's anticipated schedule of operations.
- e. The Bidder's understanding and interpretation of the Contract Documents and the Specifications.
- f. The Bidder's proposed wage rates for use on the project.
- g. The Bidder's proposed use of subcontractors and Owner's approval of subcontractors.
- h. Any unbalanced portions of the Bid, either in excess of or below the Engineer's reasonable cost analysis value.
- i. The Bidder's efforts to comply with small business, minority business enterprise and women's business enterprise utilization goals.

If Bidder fails to adequately address, to Owner's satisfaction, any of these points, Owner may reject the Bidder's Bid. Should the conference indicate that the Bidder does not appear to be in a position to properly undertake and satisfactorily complete the work or that Bidder has not properly familiarized itself with the Contract Documents, Owner reserves the right to reject the Bid of the Bidder and to consider another Bidder.

ARTICLE 13. EXECUTION OF AGREEMENT

13.1 When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by at least two unsigned copies of the Agreement. Within five days after receipt of such notification (Saturdays, Sundays, and legal holidays excluded), Contractor shall execute and deliver to Owner all copies of the Agreement, including properly issued and effective Performance and Payment Bonds, certificates of insurance and copies of applicable insurance policies, all as required in the Conditions of the Contract. As soon as possible and, in most cases, no later than 10 days thereafter, Owner will deliver one fully signed copy of the Agreement to Contractor, along with the Notice to Proceed. Owner reserves the right in its sole discretion to postpone or refuse to issue the Notice to Proceed or to take any other action it deems to be in the best interests of the State of Montana. In such case, the decision to postpone or refuse to issue the Notice to Proceed will be treated as a decision by the Owner to suspend the work under paragraph 15.01 or to terminate the Contract for the Owner's convenience under paragraph 15.03 of the General Conditions, whichever is most appropriate. If Owner and Contractor cannot mutually agree to an equitable settlement for reimbursement of the reasonable expenses directly attributable to suspension or termination of the work, the claim or dispute shall be submitted to Engineer with a request for an informal decision pursuant to the provisions of paragraph 9.04 of the General Conditions.

ARTICLE 14. SAFETY AND HEALTH REGULATIONS

14.1 The Successful Bidder shall comply with the Mine Safety and Health Administration (MSHA) regulations. These and other health and safety requirements are discussed in more detail in Part II of the Supplementary Conditions.

14.2 The Successful Bidder shall have a competent person or persons on the Site to inspect the work and to supervise the conformance of the work with the regulations of the Act.

ARTICLE 15. FEDERAL REQUIREMENTS

15.1 Contractor must comply with the Davis-Bacon Act, the Anti-Kickback Act and the Contract Work Hours and Safety Standards Act, Title VI of the Civil Rights Act of 1964, and Executive Orders 11246 and 11375. These and other regulatory requirements are discussed in more detail in Part II of the Supplementary Conditions.

ARTICLE 16. WAGE AND BENEFIT REQUIREMENTS

16.1.1 Both State and Federal wage rates and related regulations apply to this project. Certain applicable legal requirements, including labor standards, are identified in Part II of the Supplementary Conditions, and recent prevailing wage rate publications from both the state and federal Departments of Labor are attached to Part II of the Supplementary Conditions. It is the responsibility of the Contractor to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates applicable to this project will generally be the rates specified for heavy and highway construction. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry, Employment Relations Division (phone 406-444-5600).

ARTICLE 17. NONDISCRIMINATION IN EMPLOYMENT

17.1 Contracts for work under this Project will obligate the Contractor and Subcontractors not to discriminate in employment practices.

17.2 Bidder must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive the Award of the Contract.

17.3 Bidder must, if requested, submit a list of all Subcontractors who will perform work on the Project and written, signed statements from authorized agents of the labor pools with which they will or may deal for employees on the work, together with supporting information to the effect that said labor pools' practices and policies are in conformity with Executive Order No. 11246, and that said labor pools will affirmatively cooperate in or offer no hindrance to the recruitment, employment, and equal treatment of employees seeking employment and performing work under the Contract, or a certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish same prior to the Award of the Contract.

ARTICLE 18. UTILIZATION OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE's AND WBE's)

18.1 Bidders on this work are required to comply with the requirements of 43 CFR § 12.76(e), as amended, regarding the use of Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE). The Supplementary Conditions of the Contract, Part II, paragraph 1.10, specify the activities that are to be undertaken in order to comply with these requirements. Bidders are to take specific affirmative steps to utilize MBE/WBE businesses when they procure subcontractors and suppliers for the Work. Bidder's subcontractors are to observe these requirements as well in their procurement of additional goods and services for the Work. A list of known sources of services supplies, and equipment who have indicated to Owner that they meet the definition of MBE/WBE (MDT DBE Directory) may be found at the Montana Department of Transportation website [[http://www.mdt.state.mt.us/civil rights](http://www.mdt.state.mt.us/civil%20rights)]. Owner maintains another list of persons who have indicated that they meet the definition of MBE/WBE which can be obtained by calling Susan Smith (phone 406-444-5339).

ARTICLE 19. ADDITIONAL STATE OF MONTANA REQUIREMENTS

19.1 Montana Contractor Registration Requirements. Pursuant to Section 39-9-201 et. seq., MCA, all contractors must register with the Montana Department of Labor and Industry, Contractor Registration Section (phone 406-444-7734). Each Bidder shall attach a copy of their current Montana Certificate of Contractor Registration to the Bid Form. Failure to submit a Certificate of Contractor Registration with the Bid is a basis for Owner to reject the Bid under Paragraph 11.1.6.

19.2 Additional Contractor License Fee (Montana Contractor's Gross Receipts Tax). In accordance with Title 15, Chapter 50, MCA, Owner will withhold, in addition to other amounts withheld as provided by law or specified herein, 1 percent of all payments due Contractor and shall transmit such moneys to the Montana Department of Revenue. Contractor may also be responsible for similar withholding on its payments to subcontractors, in accordance with the referenced statute.

ARTICLE 20. SCHEDULE CONSIDERATIONS

The work to be performed under the Contract shall be commenced on the date set by Owner in a written Notice to Proceed and shall be substantially complete within the Contract Time. The Contract Time is based upon work being conducted Monday through Friday, excluding holidays, between the hours of 7:00 a.m. and 7:00 p.m. at the Contractor's discretion. Holidays may change the number of working days and non-working days, but there will be no additional days added to the Contract Time for holidays. Contract Time adjustments for weather will be handled in accordance with Paragraph 12.03.B. of the General Conditions. **The Contract Time will be one hundred forty (140) consecutive calendar days.** Should Contractor fail to complete the project within the Contract Time (as adjusted under the terms of the Contract Documents), the amount of actual damages sustained by Owner for such failure would be impracticable or extremely difficult to calculate. Owner and Contractor therefore agree to the amount of Seven Hundred Fifty (\$750.00) dollars per day as liquidated damages. Contractor shall pay Owner the amount of Seven Hundred Fifty (\$750.00) dollars per day for each day beyond the Contract Time that the work is not substantially complete. Upon written notice to Contractor stating the reasons therefor, Owner may deduct from the balance of any monies due Contractor, any liquidated damages that have accrued. If these monies are insufficient to pay all liquidated damages accrued, Contractor shall promptly pay Owner the balance owed.

END OF SECTION

List of Attachments to these Instructions to Bidders:

- ▶ Bid Bond Form
- ▶ Performance Bond Form
- ▶ Payment Bond Form

BID BOND**BIDDER** (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

BID

BID DUE DATE: _____

PROJECT (Brief Description Including Location):

BOND

BOND NUMBER: _____

DATE (Not later than Bid due date): _____

PENAL SUM: _____

(Words)

(Figures)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bond hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER**SURETY**

_____ (Seal)

Bidder's Name and Corporate Seal

_____ (Seal)

Surety's Name and Corporate Seal

By: _____

Signature and Title

By: _____

Signature and Title
(Attach Power of Attorney)

Attest: _____

Signature and Title

Attest: _____

Signature and Title

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by OWNER, or
 - 3.3. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power or Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. An applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of the Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business)

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bond hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligations under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER'S right, if any, subsequently to declare a CONTRACTOR Default, and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER'S concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefore to the OWNER; or

4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefore.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR'S Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuse or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. OWNER Default: Failure of the OWNER which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)

AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business)

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

EJCDC No. 1910-28-B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractor Association, and the Associated Specialty Contractors.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

- 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
- 2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The surety shall have no obligation to Claimants under this Bond until:

- 4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
- 4.2. Claimants who do not have a direct contract with the CONTRACTOR:
 - 4.2.1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - 4.2.2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and
 - 4.2.3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

- 6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- 6.2. Pay or arrange for payment of any undisputed amounts.

7. The surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owned by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of times, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)

AGENCY or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

SECTION II:

Contract Documents

PART 1:

**Bid
Documents**

SECTION II

2.1 BID FORM

OWNER: The Montana Department of Environmental Quality

CATEGORY OF IMPROVEMENTS: Mine Reclamation

CONTRACT TITLE: Zortman Alder Gulch Dump Project

CONTRACT NUMBER: DEQ Contract No. 507023

ASSURANCES BY BIDDER:

In presenting this Bid, the undersigned Bidder expressly (1) makes the following assurances and representations, (2) acknowledges that the Montana Department of Environmental Quality may rely on these assurances and representations by Bidder and (3) acknowledges that, in the event Bidder is awarded the contract for the work contemplated herein, these representations will become part of the agreement between Bidder and the Montana Department of Environmental Quality for the performance of the work. Terms used herein shall have the meanings set forth in the definitions appearing in the form of agreement presented in the Project Manual, including the Conditions of the Contract.

1. The undersigned Bidder has familiarized itself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the work.
2. Bidder has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the work which were relied upon by Engineer in the preparation of the Drawings, Special Provisions and Technical Specifications and which have been identified in the Drawings, Special Provisions and Technical Specifications in the Project Manual (and/or attachments thereto).
3. Bidder has made or caused to be made such examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the above paragraph as are necessary for the performance of the work at the Contract Price within the Contract Times and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Bidder for such purposes.
4. Bidder has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
5. Bidder has given Engineer written notice of any conflict, error or discrepancy that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder.
6. Bidder agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work. Bidder acknowledges that it has adequate information, independently verified by Bidder, to prepare and offer this Bid.

7. Bidder has prepared this bid and stands prepared to perform the work in accordance with all terms and conditions of the Agreement and the Contract Documents and all applicable laws and regulations regarding performance of the work, including without limitation, wage and hour requirements, health and safety requirements, equal employment opportunity and nondiscrimination requirements and those requirements specifically discussed in detail in Part II of the Supplementary Conditions (and attachments).

8. Bidder agrees that this Bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled Bid opening.

9. Bidder further certifies: that the only persons or parties interested in this Bid as principals are as stated herein; that at least 50% of the work will be performed by bona fide Montana residents as defined in Section 18-2-401, MCA; that Subcontractors will perform less than 50% of the work; that the Bid is made without any collusion, as defined by state and federal anti-trust laws, with other persons, firms, or corporations; and that the Bid is made upon the Bidder's independent price determination.

10. The Bidder acknowledges receipt of addenda numbered:

11. Bidder has attached a copy of its current Montana Certificate of Contractor Registration to the Bid Form. Failure to submit a Certificate will result in a determination that the Bidder is not a responsible bidder and is a basis for Owner to reject the Bid under Article 11, Instructions to Bidders.

12. Time is of the essence in completing this project. Should Contractor fail to complete the work within the Contract Time, as adjusted in accordance with the terms of the Contract Documents, it will be charged the sum of Seven Hundred Fifty (\$750.00) dollars per each day the work remains incomplete after the Contract Time has expired.

13. In accordance with the above understanding, and under the terms and conditions set out in the Instruction to Bidders, the undersigned proposes to furnish all materials and perform the Work within the Contract Time of **140 consecutive calendar days**, complete in its entirety in the manner and under the conditions required in the Contract Documents, at the price listed herein as Total Contract Price. This price shall cover all expenses to be incurred in performing the Work required under the Contract Documents, of which this Bid Form is a part. Amounts are shown in both words and figures, where indicated. In case of discrepancy, the amount shown in words will govern.

The Total Contract Price includes all labor, materials, mobilization and demobilization, overhead, profit, insurance, bonds, and incidentals required to complete the work.

SECTION II
2.1 BID FORM (cont.)

Bid Proposal

ZORTMAN ALDER GULCH DUMP PROJECT

Item No.	Estimated Quantity	Unit	Description	Unit Price	Total Price
1.	1	LUMP SUM	MOBILIZATION, DEMOBILIZATION, BONDING AND INSURANCE	XXXX	\$
2.	1	LUMP SUM	REMOVE PVC DITCH LINER (1,580 SQUARE YARDS)	XXXX	\$
3.	15,400	CUBIC YARD	SALVAGE & STOCKPILE COVERSOIL		\$
4.	1	LUMP SUM	GRADE ALDER GULCH DUMP TO CONSTRUCT LINER SUBGRADE (24,070 CUBIC YARDS)	XXXX	\$
5.	2,800	CUBIC YARD	SPREAD STOCKPILED COVERSOIL OVER GRADED OUTSIDE SLOPE		\$
6.	1	LUMP SUM	COMPACT LINER SUBGRADE (5.82 ACRES)	XXXX	\$
7.	1	LUMP SUM	INSTALL OWNER SUPPLIED DRAINAGE UNDERLINER (19,475 SQUARE FEET)	XXXX	\$
8.	1	LUMP SUM	INSTALL OWNER SUPPLIED GEOSYNTHETIC LINER (130 ROLLS GCL OVER 5.82 ACRES)	XXXX	\$
9.	14,070	CUBIC YARD	SPREAD STOCKPILED COVERSOIL OVER INSTALLED LINER AND ANCHOR TRENCHES		\$
10.	10.76	ACRES	REVEGETATION		\$
TOTAL BID					\$

TOTAL BID IN WORDS

Signature of Bidder

Contractor Registration Number / Effective Date _____
[Attach copy of current Certificate of Contractor Registration(s) to Bid Form].

If an individual: _____, doing business as _____

If a Partnership: _____

by _____, partner

If a Corporation: _____

(a _____ Corporation)

by _____

Title _____ (SEAL
AND
ATTEST)

Business Address of Bidder: _____

Telephone No: _____

Fax Number: _____

If Bidder is a joint venture, other party must sign the Bid and provide the same information (set forth above).

SECTION II

2.2 CONTRACTOR PERSONNEL AND PROPOSED PROJECT APPROACH

Contractor is required to prepare a written proposal discussing their specific experience on related or similar projects as well as their proposed project approach including project personnel, project sequencing, schedule (including identification of critical work items), and resources to be used on this project. The written proposal shall be organized into the following sections:

Section I: Project Personnel - provide a detailed chain of command list or diagram identifying key administrative and supervisory personnel. Include resumes of all identified personnel.

Section II: Proposed Project Approach - provide a detailed written description of the approach proposed for completing the major tasks. Include discussion on the sequencing of each task, if applicable. Provide a list of all equipment (make, model and quantity) to be used.

Section III: Proposed Project Schedule - provide a proposed project schedule broken down to each major work task. Identify critical work items that must be attained to meet the project schedule.

(Attach Additional Pages, If Needed)

SECTION II

2.3 CONTRACTOR QUESTIONNAIRE AND OWNERSHIP INFORMATION

The undersigned warrants the truth and accuracy of all statements and answers herein contained.
Include additional sheets if necessary.

QUESTIONNAIRE

1. How many years has your organization been in business as a (circle one) General Contractor / Subcontractor?

2. Describe and give the date and owner of the last five projects that you have completed similar in type, size and nature to the one proposed?

3. Have you ever failed to complete the work awarded to you? If so, where and why?

4. Name five individuals or corporations for which you have performed work and to which you refer. Please provide their names, addresses and telephone numbers.

5. Have you personally inspected the site of the proposed work? Describe any anticipated problems with the site and your proposed solutions.

6. Please list the names and addresses of subcontractors to be used and the portions of the Work they will perform. Only those subcontractors conducting significant (greater than \$50,000) portions of the Work need be listed.

7. The following is given as a summary of the Financial Statement of the undersigned (or attach financial statements):

8. List the following in connection with the Surety which is providing the Bid Bond:

Surety's Name: _____
Surety's Address: _____

Name and address of Surety's resident agent for service of process in Montana:

9. State the true and exact, correct and complete name under which you do business.

BIDDER

Name: _____

By: _____

Name /Title:

Phone No.: _____

OWNERSHIP INFORMATION

1. Contractor's Legal Structure:

- | | |
|--|--|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Other |

If Contractor is a sole proprietorship, list:

Owner's Name _____ Phone _____

Mailing Address _____

City _____ State _____ Zip _____

SSN _____ EIN _____

Beginning date as owner of sole proprietorship _____

2. If the contractor's legal structure is other than a sole proprietorship, provide all the information set forth below for every officer, general partner, shareholder (10% or greater of voting stock) and director or any other person or entity who owns or controls the contractor.

Name _____ Percent of Ownership _____

Mailing Address _____

City _____ State _____ Zip _____

Phone _____ Title _____ Date Position Assumed _____

SSN _____ EIN _____

Name _____ Percent of Ownership _____

Mailing Address _____

City _____ State _____ Zip _____

Phone _____ Title _____ Date Position Assumed _____

SSN _____ EIN _____

3. Identify below all persons who have the authority or ability to commit the financial, real estate or working assets of the contractor who are not otherwise identified above, as owners, officers, or directors of the contractor.

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

4. Identify any other relationships, if any, (not listed above) which gives one person authority, directly or indirectly, to determine the manner in which the contractor conducts the reclamation contract work.

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

5. VERIFICATION

I certify under penalty of perjury that I am the individual authorized to submit the bid, that I have personally examined and am familiar with the information submitted in this disclosure and all attachments, and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in this disclosure, I believe that the information is true, accurate, and complete.

Signature _____

Title _____

Date _____

CERTIFICATE OF ACKNOWLEDGMENT

State of Montana)
 : ss.
County of)

Signed and sworn to (or affirmed) before me on _____, 2000,
(date)
by _____.
(name)

(NOTARIAL SEAL) Notary Public for the State of Montana _____
Residing at: _____
My commission expires: _____

Supplemental Information for Item _____

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

Name _____ Percent of Ownership _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Title _____ Date Position Assumed _____
SSN _____ EIN _____

Supplemental Information for Item_____

Name_____ Percent of Ownership_____
Mailing Address_____
City_____ State_____ Zip_____
Phone_____ Title_____ Date Position Assumed_____
SSN_____ EIN_____

Name_____ Percent of Ownership_____
Mailing Address_____
City_____ State_____ Zip_____
Phone_____ Title_____ Date Position Assumed_____
SSN_____ EIN_____

Name_____ Percent of Ownership_____
Mailing Address_____
City_____ State_____ Zip_____
Phone_____ Title_____ Date Position Assumed_____
SSN_____ EIN_____

Name_____ Percent of Ownership_____
Mailing Address_____
City_____ State_____ Zip_____
Phone_____ Title_____ Date Position Assumed_____
SSN_____ EIN_____

PART 2:

Contract Documents

General Conditions

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

→MODIFIED←
FINAL VERSION 6/00

STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT
[Modified by Owner]

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by
The Associated General Contractors of America
Construction Specifications Institute

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

EJCDC No. 1910-8 (1996 Edition)(modified)

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.
2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.
3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.
8. *Bonds*--Performance and payment bonds and other instruments of security.
9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Conditions of the Contract* - The combined General Conditions and Supplementary Conditions.

12. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

13. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Instructions to Bidders, the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Special Provisions, Technical Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

15. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon

timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

29. *OWNER*--The Montana Department of Environmental Quality (DEQ) with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

30. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

31. *PCBs*--Polychlorinated biphenyls.

32. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

34. *Project Manual* - The manual that contains copies of documents relevant to the project, including the Instructions to Bidders, Bid Form, the forms of the Agreement and required bonds and certificates, the Conditions of the Contract, Specifications, Drawings, and Appendices.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

37. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

39. *Special Provisions* -- Project specific contract provisions contained in Section III of the Project Manual.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

42. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms [substantially completed] and [substantially completed] as applied to all or part of the Work refer to Substantial Completion thereof.

43. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

44. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

45. *Technical Specifications* - Information included under Section IV of the Project Manual.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, fiber optics, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).

B. Day

The word day shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed.

2.04 Starting the Work

CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items

which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with copies to ENGINEER and each additional insured identified in Article 5 of the Supplementary Conditions, certificates of insurance (and other evidence requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with the requirements of Article 5.

2.06 *Preconstruction Conference*

Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work, the requirements of the Contract Documents, to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

B. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

C. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

D. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

Standards, Specifications, Codes, Laws, and Regulations

A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated in the Contract Documents.

B. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

2. The provisions:

i. of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

ii. of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop

Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

OWNER does not hold title to the lands upon which the Work is to be performed. However, OWNER, as the State agency charged with the implementation of the environmental cleanup laws in the State, has legal authority to obtain and require the property owners to provide access to the site for the performance of the Work. OWNER will provide a right of access to the property to CONTRACTOR for the purposes of performing the Work. If all lands and rights-of-way are not obtained as herein contemplated before construction begins, CONTRACTOR shall begin the Work upon those lands to which OWNER has provided access.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Drawings, Special Provisions and Technical Specifications (and/or attachments thereto) identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

In the preparation of Drawings, Special Provisions and Technical Specifications, the ENGINEER has relied upon the numerous reports and tests of subsurface physical conditions at the site. These reports and the results of these tests are available in the Administrative Record for the Record of Decision for the site or in the site files maintained by the OWNER. These records may be examined by appointment at the OWNER's office during regular business hours. Certain data regarding site characteristics are presented in the Special Provisions and Technical Specifications in this Project Manual (and/or attachments thereto). These reports, records, and data are not guaranteed or warranted for accuracy or completeness; nor are they to be considered part of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may generally rely upon the accuracy of the information concerning subsurface

and physical conditions incorporated in the Drawings, Special Provisions and Technical Specifications in these Contract Documents. CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports, records and data for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. differs materially from that shown or indicated in the Contract Documents; or

2. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR's written notice shall provide ENGINEER with sufficient information, documentation, calculations and/or data to substantiate its belief that the subsurface or physical conditions differ materially from those shown in the Contract Documents or ordinarily encountered. CONTRACTOR shall provide this information, documentation, calculations and/or data at CONTRACTOR's expense. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so. CONTRACTOR shall not be entitled to receive any payment for the costs and expenses incurred as a result of Work delayed while ENGINEER considers its claim for differing subsurface or physical conditions.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will

promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER and CONTRACTOR in writing of ENGINEER's findings and conclusions and the basis for these findings and conclusions. ENGINEER's findings and conclusions will be binding on OWNER and CONTRACTOR, subject to the provisions of paragraphs 9.09 and 10.05.

ENGINEER will record the time required by ENGINEER and ENGINEER's Consultants in evaluating CONTRACTOR's belief regarding differing site conditions. If ENGINEER determines the subsurface or physical conditions do not differ materially from those shown in the Contract Documents or ordinarily encountered, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating CONTRACTOR's claim of differing site conditions.

C. Possible Price and Times Adjustments

If ENGINEER determines the subsurface or physical conditions at the site meet either of the conditions described in paragraph 4.03.A., ENGINEER will determine whether and to what extent the existence of differing subsurface or physical conditions causes an increase or decrease in CONTRACTOR's cost of, or time for, performance of the Work, requiring an adjustment in Contract Price or Contract Time or both. With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

1. CONTRACTOR knew or reasonably should have known of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid; or

2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

ENGINEER shall advise OWNER and CONTRACTOR in writing of ENGINEER's findings and conclusions and the basis for these findings and conclusions. ENGINEER's findings and conclusions will be binding on OWNER and CONTRACTOR, subject to the provisions of paragraphs 9.09 and 10.05.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any

Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraphs 9.09 and 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. ENGINEER may check the lines, elevations, reference marks, batter boards, etc., set by CONTRACTOR, and CONTRACTOR shall correct any errors disclosed by such check. Such a check shall not be considered as approval of CONTRACTOR's work and shall not relieve CONTRACTOR of the responsibility for accurate construction of the entire Work. CONTRACTOR shall furnish personnel to assist ENGINEER in checking lines and grades.

4.06 *Hazardous Environmental Condition at Site*

A. *Work Involves Hazardous Environmental Conditions.* The Work consists of activities to clean up, remove and/or immobilize Hazardous Environmental Conditions on the site. The nature and extent of contamination is presented in reports, records, and data that comprise the Administrative Record for the Record of Decision for the site or appear in the OWNER's site files relating to the site. A description of the Work and data related to the contamination is provided in the Special Provisions and Technical Specifications (and/or attachments thereto). The provisions of paragraph 4.06B through 4.06H shall apply only to Hazardous Environmental Conditions that are distinct from and are not related to the contamination that has previously been identified at the site.

B. *Distinct and Unrelated Hazardous Environmental Conditions.* CONTRACTOR shall not be responsible for any Asbestos, PCBs, petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not

identified in the records referenced above, shown or indicated in Drawings, Special Provisions or Technical Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site.

C. CONTRACTOR shall be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER and CONTRACTOR shall promptly consult with ENGINEER concerning the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraphs 9.09 and 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraphs 9.09 and 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.G shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish any other Bonds required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of [Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies] as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a Certificate of Insurance has been issued, evidence satisfactory to OWNER and any additional insured of continuation of such insurance at final payment and two years thereafter).

5.05 *OWNER's Liability Insurance*

In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense, OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the site, written on the completed value form, in an amount equal to the value of all insurable property included in the Work. This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER,

CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work.

5.07 *Coverages & Waiver of Rights*

OWNER and CONTRACTOR intend that all policies purchased in accordance with Article 5 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, - and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. CONTRACTOR waives all rights against OWNER and its respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work.

5.08 *Acceptance of Bonds and Insurance; Option to Replace*

If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with this Article 5 on the basis of its not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof. CONTRACTOR will provide such additional information in respect of insurance provided by him/her as OWNER may reasonably request. Without prejudice to any other right or remedy, the OWNER may elect to obtain equivalent insurance to protect the OWNER's interests at CONTRACTOR's expense, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be

necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site. Whenever OWNER shall notify CONTRACTOR, in writing, that any person on the Work appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with the consent of OWNER.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit additional overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

C. Work may be conducted Monday through Friday, excluding holidays, between the hours of 7:00 a.m. and 7:00 p.m. at the CONTRACTOR's Discretion. Requests to work outside of these hours shall be submitted to ENGINEER not less than 48 hours prior to any proposed work. No work outside of these hours shall be allowed without written approval of OWNER. Emergency work may be done without prior permission.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, CONTRACTOR shall provide and assume full

responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

A. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto.

B. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *"Or-Equal" Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an [or-equal] item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an [or-equal] item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the Contract Documents and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design,

be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in - paragraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No [or-equal] or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and Engineer's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or [or-equal] at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. CONTRACTOR shall not sublet or assign any part of the Work embraced within the Contract Documents without the consent of OWNER, and the latter reserves the right to withdraw at any time from any subcontractor whose Work has proved unsatisfactory, the right to be engaged in or employed upon any part of the Work. Within seven days after bids are opened, the apparent low bidder, and any other bidder so requested, shall submit a list of all Subcontractors it expects to use in the Work. An experience statement with pertinent information as to similar projects and other evidence of qualification shall be furnished for each named subcontractor, if requested by OWNER. If OWNER or ENGINEER after due investigation has reasonable objection to any proposed Subcontractor, it may before giving the Notice of Award request the apparent low bidder to submit an acceptable substitute. If the Bid increases as a result of the substitution, a corresponding adjustment will be made in the contract price. If the apparent low bidder declines to make any such substitution, the contract may not be awarded to such bidder, but bidder's refusal to substitution will not constitute grounds for forfeiture of Bid Security. Any Subcontractor so listed and to whom OWNER or ENGINEER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to the OWNER and ENGINEER. CONTRACTOR shall not be required to employ any subcontractor against whom it has reasonable objection. The use of subcontractors listed by the bidder and accepted by OWNER prior to the Notice of Award will be required in the performance of the Work.

C. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a substitution, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

D. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

E. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

F. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

G. The divisions and sections of the Special Provisions, Technical Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

H. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER.

I. OWNER or ENGINEER may furnish to any such Subcontractor, Supplier or other person or organization, to the extent practicable, information about amounts paid on their behalf to CONTRACTOR in accordance with CONTRACTOR's Applications for Payment.

6.07 *Patent Fees and Royalties*

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention,

design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, CONTRACTOR shall pay all charges of utility owners for connections to the Work.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations. Certain applicable laws and regulations are referenced in Part II of the Supplementary Conditions.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Special Provisions and Technical Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraphs 9.09 and 10.05.

6.10 *Taxes*

CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. CONTRACTOR will also be subject to withholding/fees and must comply with requirements relating to a contractor's license fee in the amount of 1 % (one percent) of gross receipts, as set forth in Title 15, Chapter 50, Montana Code Ann.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work. The

indemnification provision in this paragraph 6.11 is not intended to require CONTRACTOR to indemnify OWNER or any other party for any migration of pre-existing contamination at the site that is not caused by CONTRACTOR's negligence.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Special Provisions, Technical Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction. CONTRACTOR shall be responsible for and shall take necessary precautions and provide all material and equipment to protect, shore, brace, support, and maintain all underground pipes, conduits, drains, sewers, water mains, gas mains, cables, etc., and other underground construction uncovered in the proximity, or otherwise affected by the construction Work performed by CONTRACTOR or its subcontractors. All pavement, surfacing, driveways, curbs, walks, building, grass areas, trees, utility poles, or guy wires damaged by CONTRACTOR's operations in the performance of this Work shall be repaired and/or replaced to the satisfaction of the OWNER and ENGINEER, at CONTRACTOR's expense. CONTRACTOR shall also be responsible for all damage to streets, roads, highways, railroads, shoulders, ditches, embankments, culverts, bridges, utilities or other public or private property or facility, regardless of location or character, which may be caused by CONTRACTOR or any of its subcontractors in the performance of the Work or by moving, hauling, or transporting equipment, materials, or personnel to or from the Work or any part of the site. CONTRACTOR shall make satisfactory and acceptable arrangements with the owner of, or the agency or authority having jurisdiction over, the damaged property or facility concerning its repair or replacement or payment of costs incurred in connection with said damage.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in

the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Approval of shop drawings for equipment requiring Efficiency Guarantee Bonds will be withheld until the receipt of such Bonds.

4. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 *Continuing the Work*

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

C. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

C. The CONTRACTOR guarantees for a period of at least (1) year from the date of Final Payment for the Work that the completed Work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, in accordance with Article 13. The performance bond shall remain in full force and effect through the guarantee period.

D. The CONTRACTOR's obligations under this paragraph are in addition to the CONTRACTOR's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the CONTRACTOR for faulty materials, equipment or Work.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER and the officers, directors, partners, employees, agents, and other consultants and subcontractors of OWNER from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. CONTRACTOR shall indemnify and save OWNER harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraphs 9.09 and 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for

integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. Should CONTRACTOR cause damage to the work or property of any separate Contractor or any Subcontractor or should any claim arising out of CONTRACTOR's performance of the Work at the site be made by any separate Contractor or any Subcontractor against CONTRACTOR, OWNER, ENGINEER, ENGINEER's Consultants, or any other person, CONTRACTOR shall promptly attempt to settle with such other Contractor or Subcontractor by agreement, or arbitration, if such other Contractor or Subcontractor will so settle.

B. If such other Contractor or Subcontractor shall assert any claim against OWNER, ENGINEER and/or ENGINEER's Consultants, CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, ENGINEER, and ENGINEER's Consultants, harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys, and other professionals, and court and arbitration or mediation costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any separate Contractor or Subcontractor against OWNER, ENGINEER, or ENGINEER's Consultants to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

C. Should a separate Contractor or any Subcontractor cause damage to the Work or property of CONTRACTOR or should the performance of work by any separate Contractor or Subcontractor at the site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER, ENGINEER, or ENGINEER's Consultants or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from OWNER, ENGINEER, or ENGINEER's Consultants on account of any such damage or claim.

D. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of a separate Contractor or Subcontractor, and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, CONTRACTOR may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be CONTRACTOR's exclusive remedy against OWNER, ENGINEER, or ENGINEER's Consultants for any delay, disruption, interference, or hindrance caused by any separate Contractor or Subcontractor. This paragraph does not prevent recovery from OWNER, ENGINEER, or

ENGINEER's Consultants for activities that are their respective responsibilities.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

Except as otherwise provided in the Contract Documents, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 Replacement of ENGINEER

In case of termination of the employment of ENGINEER, OWNER shall appoint a new engineer whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 Furnish Data

OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 Pay Promptly When Due

OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.06.C.

8.05 Lands and Easements; Reports and Tests

OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

OWNER is not required to obtain insurance in Article 5, but may do so at OWNER's option.

8.07 Change Orders

OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *OWNER's Right To Stop, Suspend or Terminate Work.*

OWNER's right to stop the Work is set forth in paragraph 13.05. OWNER's right to suspend the Work is set forth in paragraph 15.01. OWNER's right to terminate the Work and CONTRACTOR's services is set forth in paragraphs 15.02 and 15.03.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of

confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.11, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.11 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *ENGINEER's Informal Decision*

A. OWNER and CONTRACTOR agree to use best efforts to negotiate a mutually acceptable resolution to any claim, dispute or other disagreement between them arising out of the Work.

B. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Except for matters arising under paragraph 4.03 (differing subsurface and physical conditions) and paragraph 9.08 (quantities and classification of Unit Price Work), all claims, disputes and other matters relating to the acceptability of the Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times when the parties otherwise cannot agree, will be referred initially to ENGINEER, in writing (copy to opposing party), with a request for an informal decision in accordance with this paragraph 9.04.

C. The request for informal decision shall set forth the essential facts supporting its position on the issue, and ENGINEER will issue its informal written opinion, within ten (10) days of the request, clarifying or interpreting the requirements of the Contract Documents, and identifying ENGINEER's recommended solution(s). ENGINEER's informal decision shall be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER's informal decision will be binding on OWNER and CONTRACTOR, unless a formal decision is sought pursuant to paragraphs 9.09 and 10.05.

D. "Days" are calendar days calculated in accordance with paragraph 17.02.

9.05 *Authorized Variations in Work*

ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraphs 9.09 and 10.05.

9.06 *Rejecting Defective Work*

ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, subject to the provisions of paragraphs 9.09 and 10.05.

9.09 *Appeals of ENGINEER's Informal Decision*

If OWNER and/or CONTRACTOR do not agree with ENGINEER's decision as to differing subsurface or physical conditions under paragraph 4.03 or ENGINEER's informal decision as to any claim, dispute or other matter rendered under paragraph 9.04 or ENGINEER's decision with respect to quantities and classification of Unit Price Work under paragraph 9.08 or the parties are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of an informal decision, a Claim may be made therefor as provided in paragraph 10.05.

9.10 *ENGINEER's Decisions*

When functioning as interpreter and judge with respect to issuing an informal decision under paragraph 4.03 (differing subsurface or physical conditions), paragraph 9.04 (general claims) or paragraph 9.08 (quantities and classifications of Unit Price Work) and/or a formal decision under paragraphs 9.09 and 10.05, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.11 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with

Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.11 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

F. Nothing in this Article 9 shall be interpreted or applied in any manner which would interfere with or supersede OWNER's statutory duty and authority to take or require action to protect the public health, welfare, or safety or the environment.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraphs 9.09 and 10.05.

10.02 *Unauthorized Changes in the Work*

CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with

respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) recommended by ENGINEER covering:

A. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08. or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

B. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

C. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraphs 9.09 and 10.05.

10.04 *Notification to Surety*

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *ENGINEER's Formal Decision.*

A. *Notice:* A written request for formal written opinion shall be made to ENGINEER (and the opposing party) within 10 days of the date of ENGINEER renders its informal written decision pursuant to paragraph 4.03.B. (differing subsurface or physical conditions), paragraph 9.04.B. (general claims) or paragraph 9.08 (quantities and classifications of Unit Price Work). The request for formal decision shall:

- i) state the amount or extent of the Claim;
- ii) explain the portions of the ENGINEER's informal decision with which the claimant disagrees;

- iii) describe the relevant facts that support claimant's position;
- iv) identify other additional, relevant information (information, documentation, calculations, and/or data) that substantiates claimant's position; and,
- v) specify the applicable provisions of the Contract Documents.

A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled. The opposing party shall submit any response to ENGINEER (and the claimant) within 10 days after receipt of the claimant's last submittal.

B. *ENGINEER's Decision:* Unless the parties otherwise agree, ENGINEER will render a formal decision in writing within 10 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR, unless an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 11 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with paragraph 9.04 and paragraphs 9.09 and 10.05.

E. "Days" are calendar days calculated in accordance with paragraph 17.02.

ARTICLE 11 - CONTRACT PRICE; PROHIBITED CONTRACTS; UNIT PRICE WORK

11.01 *Contract Price*

The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work.

11.02 *The Contract*

A. *Fixed Price Contract.* The Contract Documents contemplate a fixed-price contract (unit price, lump sum or combination of the two).

B. *Prohibited Contracts.* Cost-plus-percentage of cost (e.g. a multiplier which includes profit) or percentage-of-construction-cost types of contracts are prohibited.

C. *Value of the Work.* The value of any Work covered by a Change Order or by any Claim for adjustment in the Contract Price will be determined in accordance with paragraph 12.01 B.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. The Unit Price of an item of Unit Price Work shall be subject to re-evaluation and upward or downward adjustment if (a) the total cost of a particular item of Unit Price Work (based on original estimated quantities) exceeds 10 percent of the original Contract Price, (b) the actual quantity of that item of Unit Price Work differs from the estimated quantity by more than 25 percent, and (c) there is no corresponding adjustment with respect to any other item of Work. If the quantity decreases by more than 25 percent, the CONTRACTOR can negotiate for a higher Unit Price. If the quantity increases by more than 25 percent, the OWNER can negotiate for a lower Unit Price. The quantity determination must be supported by adequate documentation

verifying the claim, which shall include, but not be limited to, surveys or volume calculations supplied by a qualified, independent professional. If the parties cannot mutually agree upon the adjustment in Unit Price, the claim shall be determined by the ENGINEER in accordance with paragraph 9.08.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraphs 9.09 and 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum. Lump sum payment shall be a bid value to compensate CONTRACTOR for all tasks associated with a particular work/pay item. (When submitted, the lump sum will be deemed to include an amount considered by CONTRACTOR to be adequate to compensate for all costs, expenses, overhead and profit associated with the particular work/pay item. No other compensation will be allowed); or

3. where the Work involved is not covered by unit prices or a mutually agreed lump sum, on the basis of time and materials, but only if no other type of contract is suitable and the OWNER and CONTRACTOR agree to a cost ceiling that the CONTRACTOR exceeds at its own risk.

C. CONTRACTOR shall fully document to ENGINEER all costs associated with any Change Order, Written Amendment or other contract modification. If ENGINEER requires any additional information to substantiate such costs, CONTRACTOR shall promptly provide it upon request.

12.02 *Change of Contract Times*

A. All Contract Times stated in the Contract Documents are of the essence of the Agreement.

B. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraphs 9.09 and 10.05.

C. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. *Delays.* Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.B. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. *Weather Days.* In the event inclement weather or the aftermath of inclement weather prohibits CONTRACTOR from performing the scheduled sequence of operations for a minimum of 60% of the work day, it may request a credit for that day. Requests for "weather days" will ordinarily be granted, so long as ENGINEER can verify weather conditions and the amount of Work done at the site on the day(s) in question. ENGINEER's conclusions are final and binding as to the number of weather days to be granted CONTRACTOR, subject to the provisions of paragraphs 9.09 and 10.05.

12.04 *Delays Within CONTRACTOR's Control*

The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER,

be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraphs 9.09 and 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraphs 9.09 and 10.05.

13.05 *OWNER May Stop the Work*

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. If the OWNER stops Work under this paragraph 13.05, CONTRACTOR shall not be entitled to any extension of Contract Time or increase in Contract Price.

13.06 *Correction or Removal of Defective Work*

CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and Damages attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to

be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate

decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraphs 9.09 and 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraphs 9.09 and 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by

correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) or increase in Contract Price because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

CONTRACTOR shall be paid in accordance with the Special Provisions. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER.

14.02 *Progress Payments*

Progress payments on account of Unit Price Work will be based on the number of units completed. Progress payments on account of Lump Sum Work shall be based on ENGINEER's determination of the percentage of Lump Sum work completed. In the absence of an express written agreement, OWNER shall not pay for or make progress payments on account of materials and equipment delivered and stored suitably at the Site, but not yet incorporated in the Work.

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. Each application for progress payment shall be accompanied by CONTRACTOR's progress report, including an updated schedule of operations, with submittal schedules, procurement schedules, updated record drawings, and other data specified herein or reasonably required by ENGINEER. The OWNER reserves the right to require submission of monthly certified payrolls by the CONTRACTOR.

3. OWNER may retain up to 5 % (five percent) of the amount otherwise due the CONTRACTOR as security for the performance of CONTRACTOR's obligations hereunder. OWNER reserves the right without prejudice to any other remedy to increase the retainage, if OWNER determines that CONTRACTOR is not performing in accordance with the terms of this Agreement. OWNER shall also retain the amount of \$1,000.00 (one thousand dollars) until termination of the Agreement, as required by § 18-2-404(2), MCA. In accordance with state law, the OWNER may accept deposited securities in lieu of cash retainage. Retainage may be used by the OWNER to offset costs for any of

the losses enumerated in paragraphs 14.02.B.9. and paragraph 14.02.D.1, inclusive. In addition retainage may be used and applied by the OWNER to such extent as may be necessary to protect against loss from failure by the CONTRACTOR to timely complete necessary Work and to offset any liquidated damages due OWNER.

4. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. Should CONTRACTOR neglect to pay any undisputed claims made in writing to OWNER, OWNER may pay such claim and deduct the amount thereof from the balance due CONTRACTOR. OWNER may also, with the written consent of CONTRACTOR, use any monies retained, due, or to become due under this Contract for the purpose of paying for both labor and materials for the Work, for which claims have not been filed.

3. Security is provided both by the Payment Bond and the power of OWNER to retain any monies for claims, but collection or payment under one shall in no way impair or discharge the liability or security provided by the other.

4. Any and all liens for Work and materials may be paid off by OWNER within a reasonable time after the filing for record in accordance with State and local laws of the notice of such liens, except where the claim on which the lien is filed is being litigated by CONTRACTOR. In such case OWNER may pay the amount of any final judgment or decree on any such claim within a reasonable time after such final judgment or decree is rendered.

5. All monies paid by OWNER in settlement of recorded liens or to pay the amount of any final judgment or decree on any such claim, together with the costs and expenses incurred by OWNER in connection

therewith, shall be charged to CONTRACTOR, shall bear interest at the rate of 3 percentage points above the rediscount rate then charged by the Federal Reserve Bank, and may be deducted from the next payment due CONTRACTOR under the terms of this Contract.

6. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

7. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

8. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of

the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

9. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.6. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

After presentation of the Application for Payment to OWNER with ENGINEER's recommendation for payment, the amount recommended will (subject to the provisions of paragraph 14.02.D.) become due and will be paid to CONTRACTOR in accordance with the requirements of state law.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER

to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended, including without limitation, liquidated damages, or;

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.9.a through 14.02.B.9.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.

14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

B. No materials or supplies for the Work shall be purchased by CONTRACTOR or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. CONTRACTOR warrants that he/she has good title to all materials and supplies used by him/her in the Work, free from all liens, claims or encumbrances.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify

CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Final Inspection*

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 *Final Payment*

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by paragraph 5.03; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work, effective upon payment.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.06.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation (all as required by the Contract Documents) ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within a reasonable time, indicate in writing his/her recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable, subject to the provisions of paragraph 14.08. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment. After

presentation to OWNER of the Application for Payment and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the appropriate amount will be paid by OWNER within the time specified by State law for payment of obligations by the State.

2. While the Agreement and Contract Documents provide for the Substantial Completion and Partial Utilization of specified portions of the Work prior to substantial completion of all the Work, OWNER shall not be obligated to make final payment or release amounts retained as security as provided in these Contract Documents until substantial completion of and final payment for all the Work.

3. Upon satisfactory completion of the Work performed under these Contract Documents, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, CONTRACTOR shall execute and deliver to OWNER a release of all claims against OWNER arising under or by virtue of this Agreement, except claims that are specifically exempted by CONTRACTOR to be set forth therein. Unless otherwise provided in this Agreement, by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of OWNER's claims against CONTRACTOR or its sureties under these Contract Documents or against applicable performance or payment bonds.

14.07 Final Completion Delayed

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.08 Waiver of Claims

The making and acceptance of final payment will constitute:

A. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.05, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

B. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraphs 9.09 and 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

5. CONTRACTOR's failure to complete the Work as required by the Contract Documents; or

6. CONTRACTOR's abandonment of the Work, or subletting this Contract or any part thereof, without the previous written consent of OWNER, or if the Contract or any claim thereunder shall be assigned by CONTRACTOR otherwise than as allowed herein;

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, and other professionals) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. If, after termination of CONTRACTOR for cause, it is determined that CONTRACTOR did not fail to fulfill its contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER under paragraph 15.03, and, in such event, an adjustment in the Contract Price shall be CONTRACTOR's sole remedy and shall be made as provided in paragraph 15.03.

D. Upon termination under this paragraph or under paragraph 15.03, the OWNER may take over the Work and may award another party an Agreement to complete the Work under these Contract Documents.

E. If, after receipt of a notice of termination, and an opportunity for consultation, OWNER terminates this Agreement under paragraph 15.02 or paragraph 15.03, CONTRACTOR shall: (i) promptly discontinue all affected Work (unless notice directs otherwise), and (ii) promptly deliver or otherwise make available to OWNER all data, drawings, specifications, reports, estimates, summaries, and

such other information or materials as may have been accumulated by CONTRACTOR in performing this Agreement whether completed or in process.

F. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

G. Termination of the Contract or any portion thereof shall not relieve CONTRACTOR of its contractual responsibilities for the Work completed. Nor shall termination, in whole or in part, relieve the surety of its obligations for and concerning any claim arising out of the Work performed.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for all items of work completed prior to the effective date of termination at the contract rate (unit price or lump sum);

2. for all items of work partially completed prior to the effective date of termination, the ENGINEER will determine the percentage of work completed, and the CONTRACTOR will be paid at the contract rate (unit price or lump sum) multiplied by the percentage of work completed;

3. At the OWNER's option, for acceptable materials obtained by CONTRACTOR for the Work, but which have not been incorporated therein. These materials may be purchased from the CONTRACTOR at the actual cost delivered to a prescribed location; and

4. for reimbursement of reasonable expenses directly attributable to termination. CONTRACTOR shall submit to OWNER within 60 days of the effective date of termination, its claim (and supporting documentation) for reimbursement of reasonable expenses directly attributable to termination, not specifically covered by any other provision of paragraph 15.03. This submission will serve as the basis for the OWNER and CONTRACTOR to negotiate an equitable settlement with respect to reimbursement of such costs. CONTRACTOR agrees to make its cost records available to the extent necessary to determine the validity and amount of each item claimed.

OWNER shall pay CONTRACTOR all undisputed amounts for work completed and partially completed, and, at OWNER's option, for materials delivered, within 30 days of the effective date of termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. If OWNER and CONTRACTOR cannot mutually agree to an equitable settlement for reimbursement of reasonable expenses directly attributable to termination within 60 days of submission of CONTRACTOR's claim to OWNER, the CONTRACTOR shall then promptly submit the claim or dispute to ENGINEER with a request for informal decision pursuant to the provisions of paragraph 9.04.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER under paragraph 15.01 or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraphs 9.09 and 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

All claims, disputes or other matters of disagreement relating to the acceptability of the Work, the interpretation of the requirements of the Contract Documents pertaining to the

performance of the Work and claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in accordance with the informal procedures for resolving disputes under paragraph 4.03 (differing subsurface or physical conditions), paragraph 9.04 (general claims) or paragraph 9.08 (quantities and classifications of Unit Price Work). If not resolved by informal decision, then these claims, disputes and other matters of disagreement will be referred to the formal dispute settlement procedures of paragraphs 9.09 and 10.05. OWNER and CONTRACTOR agree that these informal and formal settlement procedures represent the OWNER's contractual, administrative procedures for settlement of any question or dispute arising between OWNER and CONTRACTOR under Section 18-1-402, MCA.

The rendering of a informal decision by ENGINEER pursuant to paragraphs 4.03, 9.04 or 9.08 and a formal decision pursuant to paragraphs 9.09 and 10.05, shall be conditions precedent to any exercise by OWNER or CONTRACTOR of such rights and remedies as either might otherwise have under the Contract Documents or at Law or in Equity with respect to any such claim, dispute or other matter.

OWNER or CONTRACTOR may appeal any decision made by ENGINEER pursuant to paragraphs 9.09 and 10.05 arising out of or relating to this Agreement to the District Court, in and for Lewis and Clark County, State of Montana. The record on appeal will be limited to the issues identified and information supplied by the parties during the informal dispute settlement procedure under paragraph 4.03, paragraph 9.04 or paragraph 9.08 and the formal dispute settlement procedure under paragraphs 9.09 and 10.05. The parties agree that normally, no appeal will be taken until the Project is complete. However, an appeal may be taken prior to Project completion, if the applicable statute of limitations will expire before the Work is finished. Under Section 18-1-402(1), all actions must be commenced within 1 year after a final decision has been rendered by ENGINEER.

CONTRACTOR shall carry on the Work and adhere to the Project schedule during all disputes or disagreements with OWNER as provided in paragraph 6.18.

OWNER and CONTRACTOR agree that, in the event either of them incurs any legal fees or legal expenses whatsoever, each party shall pay their own legal fees and legal expenses.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

This Contract is to be governed by the law of the State of Montana.

17.06 *Express or Implied Warranties*

No express warranty and guarantee shall be construed to deny OWNER or any other affected person the right to make claim on any applicable warranty implied by law.

Supplementary Conditions

SUPPLEMENTARY CONDITIONS

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SUPPLEMENTARY CONDITIONS

PART I - AMENDMENTS TO GENERAL CONDITIONS

The following Supplementary Conditions amend or supplement the General Conditions. All provisions, which are not so amended or supplemented, remain in full force and effect. In case of a conflict between these Supplementary Conditions and the General Conditions, the Supplementary Conditions will govern.

In addition to the Supplementary Conditions provided here, additional detail and specific requirements of the Agreement are specified elsewhere in the Contract Documents, including the Specifications and Drawings.

ARTICLE 1. DEFINITIONS AND TERMINOLOGY

1.1 Unless modified herein, the terms used in these Supplementary Conditions, which are defined in the General Conditions, have the meanings assigned to them in the General Conditions.

ARTICLE 2. PRELIMINARY MATTERS

There are no amendments to or supplementary conditions for General Conditions, Article 2.

ARTICLE 3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Contract Drawings. The Contract Drawings are in Section V.

ARTICLE 4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

There are no amendments to or supplementary conditions for General Conditions, Article 4.

ARTICLE 5. BONDS AND INSURANCE

5.1 *General Coverage Requirements.* Without limiting any of the other obligations or liabilities of the CONTRACTOR, CONTRACTOR shall secure and maintain such insurance from an insurance company (or companies) authorized to write insurance in the State of Montana, with minimum "A.M. Best Rating" of A-, as will protect himself, his subcontractors, the OWNER and the ENGINEER, and their respective agents and employees from claims as set forth in Paragraph 5.04 of the General Conditions for bodily injury, death, or property damage which may arise under this Agreement. Coverage shall be on a "per occurrence" basis and not a "claims made" basis. All such policies shall be issued in standard form with customary endorsements and shall contain no special exclusions from coverage, unless such non-standard provision or exclusions have been presented to and expressly approved by OWNER. CONTRACTOR shall not commence Work under this Agreement until such insurance has been obtained and certificates of insurance, with binders, and certified copies of the insurance policies shall have been filed with the OWNER / ENGINEER.

The minimum amounts of such insurance coverages being as follows:

A. Commercial General Liability ("CGL")

<u>Bodily Injury and Property Damage</u>	<u>\$1,000,000</u>	<u>\$3,000,000</u>
	Each Occurrence	Aggregate

Coverage to include:

1. Premises Operations
2. Products and Completed Operations \$3,000,000
Products and
Completed
Operations
3. Contractual
4. Operations of Independent Contractors
5. Personal Injury
6. Property Damage applicable to Blasting, Collapse, and Underground Hazards shall be included in coverage.

Coverage may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance. However, primary occurrence limit cannot be less than \$1,000,000. Deductible not to exceed \$5,000 per occurrence on property damage.

Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

B. <u>Automobile Liability</u>	Combined Single Limit	<u>\$1,000,000</u> Each Accident
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Bodily Injury and Property Damage:

Coverage to include:

1. All Owned
2. Hired
3. Non-Owned

C. Workers' Compensation

Workers' Compensation and Occupational Disease	Statutory
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Employer's Liability	<u>\$500,000</u> Each Accident
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Sections B and C above may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance.

D. <u>Owners and Contractors Protective Liability</u>	<u>\$1,000,000</u>	<u>\$3,000,000</u>
	Each Occurrence	Aggregate

CONTRACTOR shall purchase and maintain a separate Owners and Contractor's Protective (OCP) policy. The policy shall name as insured parties, the U.S. Department of Interior Office of Surface Mining, OWNER and all officers, agents, and employees of same. The policy must contain an agreement on the part of the insurer waiving all rights to raise the defense of immunity from suit.

E. Builder's Risk

CONTRACTOR shall purchase and maintain Builder's Risk insurance in accordance with Paragraph 5.06 of the General Conditions on the "Broadform" form of coverage in an amount equal to the value of all insurable property included in the Work.

F. Pollution Liability

CONTRACTOR shall **NOT BE REQUIRED TO** purchase and maintain contractor's Pollution Liability insurance for activities required under this Agreement in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

G. Additional Insureds

CONTRACTOR'S insurance coverage shall name the OWNER and ENGINEER and their officers, agents and employees as Additional Insureds under Commercial General Liability, Automobile Liability, Pollution Liability, and any Excess or Umbrella policies.

To the extent that the risks identified by the required coverages enumerated separately in Sections D through F are satisfied by CONTRACTOR'S primary insurance ("CGL") or a combination of primary and excess or umbrella insurance, to the amounts set forth in this Agreement, no separate policy or policies shall be required. However, CONTRACTOR shall provide all necessary documentation to establish to OWNER'S satisfaction that these risks are covered under the other policies.

5.2 OWNER'S Objection to Coverage. If OWNER has any objection to the coverage(s) afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with this Article 5 on the basis of its not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof. CONTRACTOR will provide such additional information in respect of insurance provided by him/her as OWNER may reasonably request. Without prejudice to any other right or remedy, OWNER may elect to obtain equivalent insurance to protect the OWNER'S interests at CONTRACTOR'S expense, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES

6.1 Resident Superintendent. CONTRACTOR shall not employ a resident superintendent on the project, whether initially or as a replacement, against whom OWNER has reasonable objection.

ARTICLE 7. OTHER WORK

7.1 Other Work. CONTRACTOR acknowledges that other work may be performed at the site in connection with the Work required by this Agreement. OWNER will use best efforts to ensure that the timing of these efforts will accommodate the schedule of the Work to be performed under this Agreement. CONTRACTOR's remedies for any delays resulting from problems in coordination are as specified in

Paragraph 12.03 of the General Conditions and are limited to an adjustment of the Contract Times, including the trigger date(s) for liquidated damages, as specified in Article 7 of the Agreement, Liquidated Damages.

ARTICLE 8. OWNER'S RESPONSIBILITIES

There are no amendments to or supplementary conditions for General Conditions, Article 8.

ARTICLE 9. ENGINEER'S STATUS DURING CONSTRUCTION

9.1 *Resident Project Representative.* Engineer will furnish a Resident Project Representative and assistants to assist Engineer in observing the performance of the Work. The duties and responsibilities of the Resident Project Representative will be as enumerated in a document entitled "Duties, Responsibilities and Limitations of the Authority of Resident Project Representative" and is an attachment to these Supplementary Conditions, Part II.

ARTICLE 10. CHANGES IN THE WORK; CLAIMS.

There are no amendments to or supplementary conditions for General Conditions, Article 10.

ARTICLE 11. CONTRACT PRICE; PROHIBITED CONTRACTS; UNIT PRICE WORK

There are no amendments to or supplementary conditions for General Conditions, Article 11.

ARTICLE 12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

There are no amendments to or supplementary conditions for General Conditions, Article 12.

ARTICLE 13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

There are no amendments to or supplementary conditions for General Conditions, Article 13.

ARTICLE 14. PAYMENTS TO THE CONTRACTOR AND COMPLETION

14.1 Project Closeout. To close out the Contract, the following sequence shall be used in accordance with the provisions of Paragraphs 14.04 to 14.06 of the General Conditions:

14.1.1 Once CONTRACTOR has completed construction, a substantial completion inspection is held to assess any remaining or corrective work and permit closeout of the Contract. The following conditions must be met before the substantial completion inspection is scheduled:

- Work must be substantially complete and fit for its intended purpose.
- CONTRACTOR must file a Contractor's Certificate of Completion (form found under Miscellaneous Forms in the Bid Package) requesting a substantial completion inspection by the OWNER and ENGINEER.

Following the inspection, ENGINEER prepares and signs a Certificate of Substantial Completion and attaches a list of any remaining or corrective work needed based on the inspection. The Certificate is sent

to CONTRACTOR, who must complete the listed work. After ENGINEER verifies its completion, the construction is considered fully complete. OWNER may also wish to field verify proper completion.

14.1.2 Prior to final payment including release of retainage, CONTRACTOR must furnish these items to ENGINEER:

- Completed Affidavit on Behalf of Contractor (lien release) using the form provided in the Bid Package under Miscellaneous Forms.
- Executed copies of any pending Change Orders or claims.
- The final change order shall reconcile bid quantities to reflect actual quantities.
- Letter certifying that all applicable wage rates have been complied with on the project.
- Final Payment Request for balance of Contract Price due.
- Completed Consent of Surety Company to Final Payment using the form provided in the Bid Package under Miscellaneous Forms.

Upon receipt and approval of these items, ENGINEER will prepare and sign a Certificate of Acceptance. The Certificate is sent to CONTRACTOR, who must sign it and return it to ENGINEER. ENGINEER will then submit the Certificate of Acceptance to OWNER, along with the above-mentioned items, recommending final acceptance and final payment. The five (5) percent retainage will only be released with the final payment.

ARTICLE 15. SUSPENSION OF WORK AND TERMINATION

There are no amendments to or supplementary conditions for General Conditions, Article 13.

ARTICLE 16. DISPUTE RESOLUTION

There are no amendments to or supplementary conditions for General Conditions, Article 16.

ARTICLE 17. MISCELLANEOUS.

There are no amendments to or supplementary conditions for General Conditions, Article 17.

PART II - STATUTORY AND REGULATORY PROVISIONS

The Federal and State statutory and regulatory requirements identified in this section are hereby incorporated by reference as requirements of this Agreement. This is not an exhaustive or complete listing of all legal requirements that may apply to this Agreement or to the conduct of the Work. CONTRACTOR shall comply with all Federal, State and local laws, regulations and ordinances that are applicable to the Work to be done under this Agreement.

ARTICLE 1. REGULATORY MODEL CONTRACT PROVISIONS

1.1 SUPERSESSON. CONTRACTOR and OWNER agree that the provisions set forth in this Article 1, Regulatory Model Contract Provisions, apply to the Work to be performed under this Agreement, and that the provisions set forth in this Article 1 supersede any conflicting provisions set out elsewhere in this Agreement.

1.2 PRIVITY. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this Agreement or any subcontract under this Agreement.

1.3 AUDIT; ACCESS TO RECORDS.

(a) CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance of Work under and compliance with the terms of this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and 43 C.F.R. § 12.60 [attached] in effect on the date of execution of this Agreement. CONTRACTOR shall also maintain and all financial information and data used in the preparation or support of any change order, written amendment, contract modification or subcontract. The United States Department of Interior Office of Surface Mining, Comptroller General of the United States, General Accounting Office, OWNER, and the State Legislative Fiscal Analyst or Legislative Auditor or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. CONTRACTOR will provide proper facilities for such access and inspection. OWNER may terminate this Agreement, without incurring liability, for failure of CONTRACTOR to allow access.

(b) Since this is a formally advertised, competitively awarded, fixed-price agreement, the CONTRACTOR agrees to make subparagraphs (a) through (g) of this paragraph 1.3 applicable to all negotiated change orders and Agreement amendments affecting the Agreement price.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

(d) CONTRACTOR agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this paragraph 1.3 to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained by CONTRACTOR during performance of Work under this Agreement and for a period of three (3) years after final payment. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the three (3) year record retention period, the records must be retained by the CONTRACTOR until completion of the litigation, claim, negotiation, audit, cost recovery, or other action and resolution of all issues which arise therefrom, or until the end of the original three (3) year record retention period, whichever is later. After the end of the record retention period CONTRACTOR shall not

destroy the records described in this Paragraph 1.3 without first making a written offer of the records to OWNER and providing a thirty (30) calendar day opportunity for OWNER to indicate its intention to obtain the records from CONTRACTOR. After the completion of this Agreement, CONTRACTOR may, with the consent of OWNER, deliver the records to OWNER for retention pursuant to this paragraph.

(f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all Agreement change orders and all Agreement amendments. In addition this right of access applies to all records pertaining to the Agreement, all subagreements, all change orders and all amendments:

- (1) To the extent the records pertain directly to Agreement performance;
- (2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
- (3) If the Agreement is terminated for default or for convenience.

1.4 COVENANT AGAINST CONTINGENT FEES. CONTRACTOR assures that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this assurance, OWNER shall have the right to terminate this Agreement without liability to OWNER or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.5 GRATUITIES. (a) If OWNER finds after a notice and hearing that CONTRACTOR or any of the CONTRACTOR's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the State or OSM in an attempt to secure an Agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, OWNER may, by written notice to CONTRACTOR, terminate this Agreement without liability to OWNER. OWNER may also pursue other rights and remedies that the law or this Agreement provides.

(b) In the event this Agreement is terminated as provided in paragraph (a), OWNER may pursue the same remedies against CONTRACTOR as it could pursue in the event of a breach of the Agreement by CONTRACTOR, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by OWNER) which shall be not less than three nor more than ten times the costs CONTRACTOR incurs in providing any such gratuities to any such officer or employee.

1.6 USE OF SITE DATA. All work products of CONTRACTOR generated pursuant to this Agreement shall become the sole and separate property of OWNER. Reuse by OWNER of any such work products on any other project shall be at OWNER's sole risk and without liability to CONTRACTOR. CONTRACTOR shall not release information, conclusions, notes or data generated or obtained in the performance of this Agreement to any entity or person, including employees or affiliates of CONTRACTOR who are not performing services under this Agreement, except upon the direction and consent of OWNER.

Any discovery or invention made, or data or text developed, or under development, as a result of work conducted under this Agreement is subject to Department of Interior requirements and regulations contained in 43 CFR § 12.74 relating to copyrights and rights in data. In any event, the Department of Interior Office of Surface Mining and the DEQ shall be deemed granted a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use any work, patent or copyright developed under this Agreement.

1.7 ENERGY EFFICIENCY. Performance of this Agreement must be in compliance with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

1.8 VIOLATING FACILITIES. CONTRACTOR shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and EPA regulations (40 C.F.R. Part 15) which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt Federal contracts, grants or loans.

1.9 HEALTH AND SAFETY. The nature of the Work to be performed under this Agreement is inherently hazardous. CONTRACTOR is responsible for establishing the standards of safety for its employees, subcontractors, and invitees. CONTRACTOR shall ensure that all its personnel at the site follow the requirements of a Site Health and Safety Plan.

CONTRACTOR will develop a site specific health and safety plan in accordance with the requirements of this Agreement. In performing services under this Agreement, CONTRACTOR agrees to comply with the applicable site health and safety plan(s) and with all other applicable federal or state health or safety laws and regulations, including without limitation, the Montana Safety Act, including §§ 50-71-201, 202 and 203, MCA.

1.10 SMALL BUSINESS, MINORITY BUSINESS, AND WOMEN'S BUSINESS ENTERPRISES. CONTRACTOR shall comply with the following affirmative steps as set forth in 43 C.F.R. § 12.76(e) to assure that small businesses, minority business enterprises and women's business enterprises are used when possible:

- a. placing qualified small business, minority business, and women's business enterprises on solicitation lists;
- b. assuring that small business, minority business, and women's business enterprises are solicited whenever they are potential sources;
- c. dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small business, minority business, and women's business enterprises;
- d. establishing delivery schedules, where the requirements permit, which encourage participation by small business, minority business, and women's business enterprises;
- e. using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

- f. requiring its subcontractors to comply with the requirements of this paragraph 1.10.

1.11 DEBARRED AND SUSPENDED CONTRACTORS. CONTRACTOR certifies to the best of its knowledge and belief that it and its principals:

- (i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (ii) Have not within a three year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (iii) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (ii) of this certification.
- (iv) Have not within a three-year period preceding this Bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

CONTRACTOR understands and agrees that its status as a debarred, suspended or otherwise ineligible contractor or its failure to disclose status as a debarred, suspended or otherwise excluded or ineligible contractor will be deemed just and sufficient cause for rejection the Bid as "non-responsible" or for termination without liability of any Agreement awarded.

1.12 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION. CONTRACTOR certifies that no collusion, as defined by Federal and State antitrust laws, occurred during bid preparation.

ARTICLE 2. LABOR STANDARDS

2.1 FEDERAL CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. CONTRACTOR shall be required to comply with all applicable provisions, including Sections 103 and 107, of this Act, 40 U.S.C. §§ 327-330, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. Among other things, this Act provides that no Contractor or Subcontractor contracting for any part of the Work shall require or permit any laborer or mechanic to be employed on the Work in excess of 40 hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such work week.

2.2 FEDERAL DAVIS-BACON ACT. CONTRACTOR shall be required to comply with all applicable provisions of this Act, 40 U.S.C. §§ 276a to 276a-7, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. CONTRACTOR and all Subcontractors shall pay to all laborers and mechanics employed for the construction covered by this Agreement the minimum rates of pay as determined by the Secretary of Labor in accordance with this Act. Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Agreement shall be decided by the governing body having jurisdiction.

2.3 FEDERAL COPELAND "ANTI-KICKBACK" ACT. CONTRACTOR shall be required to comply with all applicable provisions of this Act, 40 U.S.C. § 874, as supplemented by Department of Labor regulations at 29 C.F.R. Part 3. CONTRACTOR and all Subcontractors shall furnish OWNER with weekly Statements of Compliance. In case of Subcontracts, CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts for the Work which CONTRACTOR may let to insure compliance with said Anti-Kickback Act by all Subcontractors subject thereto, and CONTRACTOR shall be responsible for the submission of all Statements of Compliance required of Subcontractors by said Anti-Kickback Act except as the Secretary of Labor may specifically provide for reasonable limitations, variations, and exemptions from the requirements thereof.

2.4 MONTANA PREVAILING WAGE RATE REQUIREMENTS. CONTRACTOR must comply with the requirements for payment of wages set out in Title 18, Chapter 2, Part 4, MCA. The Montana Commissioner of Labor has established the standard prevailing rates of wages in accordance with §§ 18-2-401 and 18-2-402, MCA, a copy of which is attached to this Part II of the Supplementary Conditions. The CONTRACTOR agrees to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates applicable to this project will generally be the rates specified for heavy and highway construction. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry.

If CONTRACTOR employs any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the Montana Department of Labor and Industry. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. CONTRACTOR shall notify OWNER of its intention to employ persons in trades or occupations not classified in sufficient time to obtain approved rates for such trades or occupations.

Under § 18-2-406, MCA, CONTRACTOR must post in a prominent and accessible location at the site, not later than the first day of work, a legible statement of all wages to be paid to employees employed at the site. Under § 18-2-423, MCA, any employees receiving an hourly wage are to be paid on a weekly basis.

2.5 MONTANA RESIDENT LABOR AND MONTANA-MADE GOODS PREFERENCE. In accordance with the requirements of §§ 18-2-403 and 409, MCA, CONTRACTOR and all of its subcontractors shall give preference to the employment of bona fide Montana residents in the performance of the Work. At least 50% of the Work must be performed by bona fide Montana residents, as defined in § 18-2-401, MCA. In addition, in accordance with § 18-1-112, MCA, in all instances Montana-made goods must be preferred for use in the performance of this Agreement, if such goods are comparable in price and quality.

ARTICLE 3. EQUAL OPPORTUNITY AND NONDISCRIMINATION IN EMPLOYMENT

3.1 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS. CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations at 41 C.F.R., Chapter 60. A one-page notification form, entitled "Nondiscrimination in Employment," to be utilized under the above-referenced Executive Order is attached hereto.

3.2 CERTIFICATION OF NONSEGREGATED FACILITIES. CONTRACTOR shall submit a complete and properly executed Certification of Non-Segregated Facilities in the form attached hereto.

3.3 STATE EQUAL OPPORTUNITY REQUIREMENTS. Pursuant to §§ 49-2-303 and 49-3-207, MCA, CONTRACTOR shall not perform this Agreement in a manner which discriminates against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Any hiring shall be on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

List of Attachments to these Supplementary Conditions, Part II:

- ▶ Wage Rate Schedules
- ▶ Duties, Responsibilities and Limitations of the Authority of Resident Project Representative.
- ▶ Certificate of Nonsegregated Facilities
- ▶ Nondiscrimination in Employment

Attachments to Supplementary Conditions

MONTANA PREVAILING WAGE RATES

Heavy Construction

Rates effective: March 10, 2006

**Brian Schweitzer, Governor
State of Montana**

**Keith Kelly, Commissioner
Department of Labor & Industry**

To obtain copies of prevailing wage rate schedules, contact:
Research and Analysis Bureau, Workforce Services Division
Montana Department of Labor and Industry
P. O. Box 1728, 840 Helena Ave.
Helena, MT 59624-1728
Phone 406-444-2430 FAX 406-444-2638
Toll free 800-541-3904
TDD 406-444-0532

We're also on the Internet at: **www.ourfactsyourfuture.org**
For information relating to public works projects and payment of
prevailing wage rates visit ERD at:
www.mtwagehourbopa.com or contact them at
Employment Relations Division
Montana Department of Labor and Industry
P. O. Box 6518
Helena, MT 59604-6518
Phone 406-444-5600
TDD 406-444-5549

The Research and Analysis Bureau welcomes questions, comments and suggestions from the public. In addition, we'll do our best to provide information in accessible format, on request, in compliance with the Americans with Disabilities Act.

MONTANA PREVAILING WAGE REQUIREMENTS

Heavy Construction

The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated, has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of 18-2-401, et seq., Montana Code Annotated. It is required that each employer pay, as a minimum, the rate of wages, including fringe benefits and zone pay applicable to those occupations in which the work is being performed, as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the Internet at: www.ourfactsyourfuture.org or by contacting the Research and Analysis Bureau at (800) 541-3904 or TDD (406) 444-0532. In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and payment of prevailing wages. For detailed compliance information relating to Public Works projects and payment of prevailing wage rates, please consult the Regulations on the Internet at: www.mtwagehourbopa.com or contact the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

Keith Kelly
Commissioner
Department of Labor and Industry
State of Montana

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A. Date of Publication: March 10, 2006

B. Definition of Heavy Construction

The Administrative Rules of Montana (ARM) 24.17.501 (4) – (4)(a), Public Works Contracts For Construction Services Subject to Prevailing Rates, states that “Heavy construction projects include, but are not limited to, those projects that are not properly classified as either ‘building construction’, or ‘highway construction.’”

Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries, flood control projects, industrial incinerators (other than building), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), pipe lines, ponds, pumping stations (prefabricated drop-in units – not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings) and wells.”

Federal Davis-Bacon wage rates as published in U.S. Department of Labor General Wage Decision No. MT20030001 Modification No.14 have been adopted by the Montana Department of Labor and Industry for use in Heavy Construction projects and are included in this publication. These rates apply statewide or as shown in MT20030001 Modification No. 14.

C. Definition of Public Works Projects

The Montana Code Annotated (18-2-401 (11)(a)) defines “public works contract” as “a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000.”

D. Prevailing Wage Schedule

This publication covers only Heavy Construction occupations and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rates schedules for Building Construction, Highway Construction and Non-construction Services occupations can be found on the Internet at www.ourfactsyourfuture.org or by contacting the Research and Analysis Bureau at (800) 541-3904 or TDD (406) 444-0532.

E. Fringe Benefits

Section 18-2-412 of the Montana Code Annotated states that:

“(1)... a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States Department of Labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States Department of Labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States Department of Labor.”

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

Employers are obligated to pay the wage rates and fringes as listed in the booklet, including the zone hourly rate when applicable. For heavy and highway construction occupations, the vacation benefit amount is **not** included in the prevailing wage rate, unless stated otherwise.

F. Apprentices

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. However, apprentices not registered in approved federal or state apprenticeship programs will be paid the prevailing wage rate when working on a public works contract.

G. Posting Notice of Prevailing Wages

Section 18-2-406, Montana Code Annotated, provides that contractors, subcontractors, and employers who are performing work or providing services under public works contracts as provided in this part shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees on such site or work area.

H. Employment Preference

Sections 18-2-403 and 18-2-409, Montana Code Annotated require contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

I. Rates to Use for Projects

Rates to be used on a public works project are those that are in effect at the time the project and bid specifications are advertised.

MONTANA STATEWIDE PREVAILING DAVIS-BACON

Rates Effective: March 10, 2006

HEAVY CONSTRUCTION WAGE RATES

General Wage Determinations Issued Under
the Davis-Bacon and Related Acts

State: Montana

Construction Types: Heavy

Counties: Montana Statewide.

HEAVY CONSTRUCTION PROJECTS

ZONE DEFINITIONS

CARPENTERS, *CEMENT MASONS, LABORERS, POWER EQUIPMENT OPERATORS
AND TRUCK DRIVERS

The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HAVRE, HELENA,
KALISPELL, LEWISTOWN, MILES CITY, MISSOULA

Zone 1: 0 to 30 miles - Base Pay
Zone 2: 30 to 60 miles - Base Pay + \$2.95
Zone 3: Over 60 miles - Base Pay + \$4.70

*CEMENT MASONS ZONES: The above cities plus DILLON, GLASGOW,
GLENDDIVE, SIDNEY

Modification Number	Publication Date
0	06/13/2003
1	11/07/2003
2	11/28/2003
3	01/23/2004
4	03/05/2004
5	04/09/2004
6	05/07/2004
7	09/10/2004
8	10/08/2004
9	04/01/2005
10	04/08/2005
11	04/22/2005
12	05/27/2005
13	06/24/2005
14	09/09/2005

* CARP0028-002 06/01/2005

	Rates	Fringes
Carpenters: (Zone 1)		
Carpenter & Pilebuck.....	\$ 19.60	7.80
Millwright.....	\$ 21.60	7.80

CARP0028-004 06/01/2004		

	Rates	Fringes
Diver Tender.....	\$ 27.30	7.45
Diver.....	\$ 57.50	7.45

ELEC0044-001 06/01/2002		

Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith, Basin, Lewis And Clark, Liberty, Madison, McCone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, And Yellowstone Counties

	Rates	Fringes
Line Construction		
(1) Lineman.....	\$ 25.79	4.25%+6.71
(2) Equipment Operator.....	\$ 20.63	4.25%+6.34
(3) Experienced Groundman...	\$ 16.76	4.25%+6.07

ELEC0233-001 06/01/2004		

Blaine, Broadwater, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Lewis & Clark, Liberty, Meagher, Petroleum, Phillips, Pondera, Teton, Valley, and Wheatland Counties

	Rates	Fringes
Electrician.....	\$ 23.26	3%+8.04

ELEC0233-002 06/01/2004

Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, And
Silver Bow Counties

	Rates	Fringes
Electrician.....	\$ 23.25	3%+8.49

* ELEC0532-001 06/01/2005

Gallatin, Park, And Sweet Grass Counties

	Rates	Fringes
Electrician.....	\$ 22.94	4.25%+8.00

ELEC0532-003 06/01/2004

Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon,
Garfield, Golden Valley, McCone, Musselshell, Powder River,
Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater,
Treasure, Wibaux And Yellowstone Counties

	Rates	Fringes
Electrician.....	\$ 24.08	4.25%+8.64

ELEC0768-001 03/01/2005

Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, And
Sanders Counties

	Rates	Fringes
Electrician.....	\$ 25.20	9.16

Flathead, Lake, And Lincoln Counties

	Rates	Fringes
Line Construction		
(1) Cable Splicer.....	\$ 30.39	10.76
(2) Lineman.....	\$ 27.97	10.59
(3) Groundman.....	\$ 17.47	9.92
(4) Line Equipment Operator..	\$ 21.67	10.22
(5) Pole Sprayer.....	\$ 22.57	10.28
(6) Tree Trimmer.....	\$ 23.42	10.35
(7) Utility Locator.....	\$ 15.40	9.78

ENG10400-001 05/01/2005

	Rates	Fringes
Power Equipment Operator (Zone 1)		
Group 1.....	\$ 20.62	7.55
Group 2.....	\$ 21.09	7.55
Group 3.....	\$ 21.49	7.55
Group 4.....	\$ 22.15	7.55
Group 5.....	\$ 22.65	7.55
Group 6.....	\$ 23.75	7.55
Group 7.....	\$ 24.25	7.55

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Air Compressor; Auto Fine Grader; Belt Finishing Machine; Boring Machine, small; Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front-end Loader under 1 cu yd; Heavy Duty Drills; Herman Nelson Heater; Mulching Machine; Oiler, all except Cranes. & Shovels; Pumpman.

GROUP 2: Air Doctor; Backhoe/Excavator/Shovel to and including 3 cu yd; Bit Grinder; Bituminous Paving Travel Plant; Boring Machine, large; Broom, self-propelled; Concrete Travel Batchers; Concrete Float & Spreader; Concrete Bucket Dispatcher; Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer, Rubber-Tired, Push & Side Boom; Elevating Grader/Gradall; Field Equipment Serviceman; Front-end Loader 1 cu yd to including 5 cu yd; Grade Setter; Heavy Duty Drills, all types; Hoist/Tugger,

all; Hydralift & similar; Industrial Locomotive; Motor Patrol, except Finish; Mountain Skidder; Oiler - Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, self-propelled; Pugmill; Pumpcrete/Grout Machine; Punch Truck; Roller, other than Asphalt; Roller, Sheepsfoot, self-propelled; Roller, 25 tons and over; Ross Carrier; Rotomill under 6 ft; Trenching Machine; Washing/Screening Plant.

GROUP 3: Asphalt Paving Machine; Asphalt Screed; Backhoe/Excavator/Shovel over 3 cu yd; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes, Creter; Cranes, Electric Overhead; Cranes, 24 tons and under; Curb Machine/Slip Form Paver; Finish Dozer; Front-end Loader over 5 cu yd; Mechanic/Welder; Pioneer Dozer; Roller, Asphalt (Breakdown & Finish); Rotomill, over 6 ft; Scraper, single, twin, or pulling Belly Dump; Yo-Yo Cat.

GROUP 4: Asphalt/Hot Plant Operator; Cranes, 25 tons to 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

GROUP 5: Cranes, 45 tons to including 74 tons; Crane, Tower, all.

GROUP 6: Cranes, 75 tons to including 149 tons; Crane, Whirley, all.

GROUP 7: Cranes, 150 tons to including 250 tons (add \$1.00 for every 100 tons over 250 tons); Crane, Stiff-Leg or Derrick; Helicopter Hoist.

IRON0841-002 07/01/2003

Remaining Counties

	Rates	Fringes
Ironworker.....	\$ 19.20	12.51

	Rates	Fringes
Laborers: (Zone 1)		
Group 1.....	\$ 14.52	5.50
Group 2.....	\$ 17.34	5.50
Group 3.....	\$ 17.48	5.50
Group 4.....	\$ 18.20	5.50

LABORERS CLASSIFICATIONS

GROUP 1: Flagperson

GROUP 2: All General Labor work; Burning Bar; Bucket man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete worker; Curb Machine-Lay Down; Crusher and Batch worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sealants for concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Spike Driver; Signalman; Tail Hoseman; Tool Checker and Houseman; Traffic Control worker.

GROUP 3: Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker); Laser Equipment; Non-Riding Rollers; Pipelayer; Posthole Digger (Power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-Power; Tampers; Creosote Handler

GROUP 4: Asphalt Raker; Asbestos Laborer; Cutting Torch; Grade Setter; Hazmat Worker; High-Scaler; Power Saws (Faller & Concrete); Powderman (\$1.00 per hour above Group 4 rate); Rock & Core Drill; Tank/Vessel Cleaner; Track or Truck mounted Wagon Drill; Welder including Air Arc

PAIN0260-001 07/01/2002

Blaine, Broadwater, Cascade, Chouteau, Daniels, Fergus,
Garfield, Glacier, Granite (South Of A Line Running East & West
Through The Southern City Limits Of Phillipsburg), Hill,
Jefferson, Judith Basin, Lewis And Clark, Liberty, McCone,
Meagher, Petroleum, Phillips, Pondera, Powell (South Of A Line
Running East & West Through The Southern City Limits Of
Helmsville), Richland, Roosevelt, Sheridan, Teton, Toole,
Valley, And Wheatland Counties

	Rates	Fringes
Painter.....	\$ 13.85	1%+3.45

PAIN0260-002 07/01/2002

Flathead, Granite (North Of A Line Running East & West Through
The Southern City Limits Of Phillipsburg), Lake, Lincoln,
Mineral, Missoula, Powell (North Of A Line Running East & West
Through The Southern City Limits Of Helmsville), Ravalli, And
Sanders Counties

	Rates	Fringes
Painter.....	\$ 16.85	1%+3.45

PAIN1922-001 06/01/2001

Beaverhead, Big Horn, Carbon, Carter, Custer, Dawson, Deer
Lodge, Fallon, Gallatin, Golden Valley, Jefferson, Madison,
Musselshell, Park, Powder River, Prairie, Rosebud, Silver Bow,
Stillwater, Sweet Grass, Treasure, Wibaux, And Yellowstone
Counties

	Rates	Fringes
Painter (Industrial, includes industrial plants, tanks, pipes, bridges).....	\$ 17.80	7.63

PLAS0119-001 05/01/2005

Statewide (except Deer Lodge, Jefferson, Powell, and Silver Bow Counties)

	Rates	Fringes
Cement Masons: (Zone 1)		
Area 1.....	\$ 17.71	6.20
Area 2.....	\$ 18.82	6.20

AREA 1: Statewide (except Deer Lodge, Jefferson, Powell, and Silver Bow Counties)

AREA 2: Deer Lodge, Jefferson, Powell, And Silver Bow Counties

PLUM0030-003 09/01/2004

Bighorn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, McCone, Meagher, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Teton, Toole, Treasure, Valley, Wheatland, Wibaux And Yellowstone Counties

	Rates	Fringes
Plumber.....	\$ 24.50	10.65
Industrial - Power		
Generating Plants.....	\$ 26.85	10.65

* PLUM0041-001 07/01/2005

Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis And Clark, Madison, Park, Powell, Silver Bow, And Sweet Grass Counties

	Rates	Fringes
Plumber.....	\$ 24.70	9.55

PLUM0459-001 05/01/2004

Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Ravalli,
And Sanders

	Rates	Fringes
Plumber.....	\$ 23.41	9.30

TEAM0002-001 06/01/2003

	Rates	Fringes
Truck drivers: (Zone 1)		
Group 1.....	\$ 13.31	5.31
Group 2.....	\$ 17.34	5.31

TRUCK DRIVERS CLASSIFICATIONS:

GROUP 1: Pilot Car

GROUP 2: All Combination Trucks and Concrete Mixers;
Distributor Driver; All Dry Batch Trucks; Dumpman, Gravel
Spreader Box Operator; All Dump Trucks and similar
equipment including DW 20, DW 21, or Euclid Tractor;
Dumpsters; Flat Trucks; Servicemen; Lowboys, Four-Wheel
Trailers; Float Semi-Trailer; Lumber Carriers, Lift Trucks
& Fork Lifts; Pick-up Driver hauling material; Powder
Truck (Bulk Unloader type); Power Boom; Service Truck
Dirvers, Fuel Truck Drivers, Tiremen; All Water Tank
Drivers; Petroleum Products Drivers; Trucks with Power
Equipment such as Winch, A-Frame Truck, Crane, Hydralift,
Gout-Crete Truck, and Combination Mulching, Seeding &
Fertilizing Truck; Truck Mechanic

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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END OF GENERAL DECISION

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY
OF THE RESIDENT PROJECT REPRESENTATIVE

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on _____, 20____, between _____ (OWNER) and _____ (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR. However, ENGINEER shall not, during such visits or as a result of such observations of CONTRACTOR's work in progress, supervise, direct, or have control over CONTRACTOR's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by CONTRACTOR, for safety precautions and programs incident to the work of CONTRACTOR, for any failure of CONTRACTOR to comply with laws, rules, regulations, ordinances, codes or orders applicable to CONTRACTOR's performing and furnishing the work, or responsibility of construction for CONTRACTOR's failure to furnish and perform the Work in accordance with the Contract Documents.

The duties and responsibilities for the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealing in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules*: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings*: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meeting, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. *Liaison:*

- a. Serve as Engineer's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER'S liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. *Shop Drawings and Samples:*

- a. Record date of receipt of Shop Drawings and Samples.
- b. Receive Samples, which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of Samples for examination.
- c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*

- a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the work is in general proceeding in accordance with the Contract Documents.
- b. Report to ENGINEER whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- c. Verify that test, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR in writing decisions as issued by ENGINEER.

8. *Records:*

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER'S clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to CONTRACTOR and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording CONTRACTOR's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses and telephone numbers of all CONTRACTOR's, subcontractors and major suppliers of materials and equipment.

9. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and field Orders.
- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

10. *Payment Requests:* Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the contract Documents, and have this material delivered to ENGINEER for the review and forwarding to OWNER prior to final payment for the Work.

12. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Observe whether CONTRACTOR has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- c. Conduct a final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set for the in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities for CONTRACTOR, Subcontractors, Suppliers, or CONTRACTOR's superintendent.

4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

CERTIFICATION OF NONSEGREGATED FACILITIES

The construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor certifies further that he will not maintain or provide for his employees segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract.

As used in this certification, the term "segregated" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms and other storage or dressing areas, parking lots, drinking foundations, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or any other reason. The construction contractor agrees that (except where obtained identical certification from proposed subcontractor for specific time periods) he will obtain identical certification from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause, and that he will retain such certifications in his files.

Certifications: The information is true and complete to the best of my knowledge and belief.

Name and Title of Signer (please type)

Signature

Date

Note: The penalty for making false statements in offers is prescribed in 18 USC 1001.

Firm

Name: _____

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NONDISCRIMINATION IN EMPLOYMENT

To: _____
Name of Union or Organization of Workers

The undersigned contractor currently holds a contract numbered DEQ Contract No.501027 with the Montana Department of Environmental Quality.

You are advised that under the provisions of the above contract and in accordance with the President's Executive Orders 11246 and 11375, the undersigned is obligated not to discriminate against any employee or applicant for employment because of race, color, creed, sex or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

HIRING, PLACEMENT, UPGRADING, TRANSFER OR DEMOTION

RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOYMENT

TRAINING DURING EMPLOYMENT

RATES OF PAY OR OTHER FORMS OF COMPENSATION

SELECTION FOR TRAINING INCLUDING APPRENTICESHIP

LAYOFF OR TERMINATION

This notice is furnished you pursuant to the provisions of the above contract and Executive Orders 11246 and 11375.

Contractor

Date

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

Labor Standards Provisions for Federal and Federally Assisted Contracts

Section 5.5 Contract provisions and related matters.

(a) The Administrator of the U.S. Environmental Protection Agency (EPA) requires the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating of a public building or public work or building or work financed in whole or in part from Federal funds or in accordance with guarantees of the U.S. Environmental Protection Agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant, or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in section 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency. Provided, that such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached here to and made a part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a) (1) (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in section 5.5 (a) (4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a) (1) (ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and,

(2) The classification is utilized in the area by the construction industry; and,

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known) or their representatives and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration (W&H, ESA), U.S. Department of Labor, Washington DC 20210. The Administrator W&H, ESA or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number: 1215-0140.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed

classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer to the Administrator W&H, ESA for determination. The Administrator W&H, ESA or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30 day period that additional time is necessary. (Approved by the Office Management and Budget under OMB control number: 1215-0140.)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payment to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1225-0140.)

(2) Withholding. The U.S. Environmental Protection Agency (EPA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the U.S. Environmental Protection Agency may, after written notice

to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and Social Security Number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b) (2) (B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs (Approved by the Office of Management and Budget under OMB control 1215-0140 and 1215-0017)

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the U.S. Environmental Protection Agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be for transmission to the U.S. Environmental Protection Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5 (a) (3) (i) of Regulations 29 CFR Part 5. This information may be submitted in any form desired. Optional Form 347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5 (a) (3) (i) of 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a) (3) (ii)

(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a) (3) (i) of this section available for inspection, copying, or transcription by authorized representatives of the U.S. Environmental Protection Agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the U.S. Environmental Protection Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator W&H, ESA determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor Employment

and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity: The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5 (a) (1) through (10) and such other clauses as the U.S. Environmental Protection Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1,3 and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C 1001.

(b) Contract Work Hours and Safety Standards Act. The Administrator, EPA shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b) (1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by section 5.5(a) or section 4.6 of Part 4 of this title. As used in this paragraph the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics in any workweek in which he or she is employed on such a work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation: liability for unpaid wages, liquidated damages. In the event of any violation of the clause set forth in paragraph (b) (1) of this section the contractor and any subcontractor responsible therefor shall be liable for

unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b) (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b) (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The U.S. Environmental Protection Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b) (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in section 5.1, the Administrator of EPA shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, the Administrator EPA shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by

authorized representatives of the U.S. Environmental Protection Agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

SECTION III:

Special Provisions

SECTION III SPECIAL PROVISIONS

This section of the Contract Documents describes the project and details the work required as shown on the construction drawings. The Technical Specifications for each component of the project are referenced and the method of measurement and payment is identified. Any Special Provisions applicable to this project are also identified. For any discrepancies between the Special Provisions and the Technical Specifications, the Special Provisions will govern.

1. PROJECT DESCRIPTION

A pre-bid conference is scheduled. The date and time for this conference are found in Section I, 1.1 Invitation For Bid, Subsection Pre-Bid Conference on Page IFB-2. The Contract Time for this bid package is found in Section I, 1.1 Invitation For Bid, Subsection Contract Time on Page IFB-2.

The Zortman Alder Gulch Dump Project site is located in the Sections 7 and 18, Township 25 North, Range 25E, Phillips County, Montana. The site is situated 2 miles northwest of Zortman, Montana, which lies between Malta and Lewistown on US 191. This area is shown on the Zortman 7½ minute USGS quad at latitude N47°56'00" and longitude W108°33'35". To access the site from Lewistown, drive north on Highway 191 to its junction with State Route 66. Continue another 7 miles northeast on US 191 to the Zortman turnoff, which is prominently marked. Turn north onto the gravel road and travel another 6 miles to another junction. The town of Zortman is another miles west (left) from this junction. Turn right at the Zortman Garage and Motel and cross Ruby Gulch and proceed up the hillside to the locked security gate. The Contractor and their employees will be allowed to supply their own lock on this gate. Proceed through the gate and up the mountain another 2.4 miles to the work site.

The Contractor will need to supply toilet and fueling facilities suitable for their operations. A source of drinking and wash water will not be available at the site. Cellular telephones will only operate from hilltop positions. However, emergency telephone service is available at the Zortman Water Treatment Plant (406-673-7443). Space in an inactive equipment maintenance building situated adjacent to the construction site can be leased from the landowner for \$800.00 per month (no power or heat included).

The objective of the planned work is to install a water infiltration barrier over the top bench of the Alder Gulch Dump to limit the amount of water seeping through the waste rock and exiting as acid rock drainage at the toe of the dump. The top of the dump will be graded as a small drainage basin that routes runoff away from the dump face and into existing surface drainage facilities located at the southeast corner of the dump.

2. INSPECTION OF SITE AND PREBID CONFERENCE

In accordance with Article 3 of the Instructions to Bidders, Contractor shall satisfy him/herself as to the construction conditions by personal examination of the site of the proposed work and any other examination and investigation that he/she may desire to make as to the nature of the construction and the difficulties to be encountered. Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy, which Contractor may discover and shall obtain a written interpretation from Engineer before proceeding with the work.

3. PRECONSTRUCTION CONFERENCE

Within twenty days after the effective date of the Agreement and before Contractor starts work at the site in accordance with Paragraph 2.06 of the General Conditions, a Preconstruction Conference between Owner, Contractor, Engineer, and others as appropriate, will be held to establish a working understanding among the parties as to the work. The purpose of the conference will be to discuss schedules, submittal procedures, applications for payment, site-specific construction-related issues, maintaining required records and any other matters pertinent to the Work.

4. PROJECT RELATED CONTACTS

- (a) Owner and General Information: Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
Telephone: 406-444-0529
Fax: 406-444-1374
Contact: Wayne Jepson
- (b) Engineer and Technical Information: Spectrum Engineering
1413 Fourth Avenue North
Billings, MT 59101
Voice: 406-259-2412 ext. 3 or ext. 4
Fax: 406-259-1456
Contact: Bill Maehl or Dave Murja
- (c) Landowner Contact: Mr. Dale Ployhar
Landowner's Father
9480 Maiden Road
Lewistown, MT 59457
406-538-8285
- (d) Utilities: None Affected

5. SPECIAL CONSTRUCTION TECHNIQUES

Contractor should consider these factors when preparing the Bid and planning for the Project.

Mine wastes are ordinarily encountered in tailings ponds, waste rock piles and as other deposited materials on a site. These materials are usually comprised of various chemical compositions displaying a wide range of particle fractions (clays to sands to gravels), and sorting which are deposited in beds / pockets of varying thickness and moisture contents (relatively dry to saturated). It is inherent in the nature of mine waste reclamation that Contractor will encounter mine wastes of varying characteristics on the same site, depending upon changes in milling processes, mineralogy and geology of the ore, the deposition of the waste and any potential changes to the waste after deposition. As such, Owner cannot predict with substantial accuracy specific locations on site or material quantities that require special construction techniques. Contractor may encounter subsurface conditions that require specialized work or handling techniques at any point during the Work.

Contractor shall be the sole authority for the means and methods necessary to complete the work as specified and shown in the Drawings, Special Provisions and Technical Specifications. To the extent specialized or repeated handling, active and passive dewatering and other site-specific work methods are required as the mine wastes are removed / consolidated, the costs associated with these specialized work methods are incidental to the Work. Contractor shall only be paid in accordance with its Bid for those Unit Price and Lump Sum items expressly described in Special Provisions, Measurement and Payment.

Contractor assumes full and sole responsibility for the capability of his selected construction techniques to complete the work in accordance with the Drawings, Special Provisions and Technical Specifications. Contractor also assumes full responsibility for safety and environmental protection with his selected construction techniques. Submittal review in no way relieves Contractor of these responsibilities. The extent of construction technique submittal review by Owner and its representatives shall be only to ascertain that the proposed technique appears capable of achieving a completed product consistent with the design intent of the Drawings, Special Provisions and Technical Specifications.

6. HEALTH AND SAFETY PLAN

The work requires handling of mine waste rock which contains metals that are listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq. Contractor shall submit a site specific Health and Safety Plan. In performing services under this Agreement, Contractor agrees to comply with the health and safety plan and with all applicable federal and state health or safety laws and regulations, including without limitation, the Montana Safety Act, including Sections 50-71-201, 202 and 203, MCA.

At a minimum, the plan shall address the following elements: staff organization, responsibilities, and authorities; site description; hazard analysis for each project task and operation; general and site-specific training; personal protection equipment; medical surveillance; personal and environmental exposure monitoring; standard operating safety procedures, engineering controls, and work practices; communications; illumination; site control measures; personnel hygiene and decontamination; equipment decontamination; emergency equipment and first aid; emergency response and contingency procedures; and logs, reports, and record keeping.

7. SPEED AND WEIGHT LIMITS

Posted speed limits must be observed on the roads leading to the reclamation site(s) as well as all other public roadways. Haul vehicles and all other vehicles used in the work shall strictly comply with these limits. Legal weight limits for public roadways and bridges must also be observed in all hauling activities.

8. PERMITS

Permits may be needed and it is Contractors' responsibility to obtain any required permits for the Work. The cost to secure permits shall be considered incidental to the work, including permit requirements for maintenance, record keeping, and reporting. Copies of all permits shall be submitted to Engineer prior to initiating construction activities.

Contractor shall be responsible for obtaining all permits necessary for conducting the work. Delay by Contractor in making any required applications / submittals may delay permitting and will not be grounds for any extension of Contract Time.

9. QUALITY CONTROL/QUALITY ASSURANCE

Quality control will be the responsibility of Contractor in order to assure that construction complies with the requirements of the contract plans, special provisions, and specifications. Engineer will be responsible for quality assurance in the form of construction oversight to check that Contractor is performing adequate construction and quality control.

10. WORK DESCRIPTION

(A) Mobilization (Bid Item No.1)

General: This bid item covers the cost of mobilizing and demobilizing in accordance Section IV, Technical Specifications, Subsection 100.00: Mobilization. The project location is shown on Sheet 1 of the project drawings. Access from Zortman and the construction area are shown on Sheet 2. The area around the truck shop will be used as the staging area. The truck shop, which has storage and office space, can be leased from the landowner for \$800.00 per month (no power or heat included).

Buried lines are located within the construction area. Contractor is responsible for locating and protecting them from possible damage. The Engineer will provide the initial staking on these locations. All costs associated with providing protective measures and with providing compensation for any Contractor-caused damage to them will be paid by Contractor.

Measurement: There will be no direct measurement of this bid item.

Payment: Fifty percent payment of the lump sum price bid for this item will be allowed once Contractor has submitted bond and insurance certificates, is fully mobilized to the site, and has forwarded all submittals to Owner for approval. Full payment of the lump sum price bid for "Mobilization" will be allowed once Contractor has completed the work for the remainder of the contract, completed final clean up work, and has fully demobilized equipment and materials from the site. Payment will be based on the total lump sum amount bid as shown in the Bid Form of the Contract Documents. **The bid price for this item must not exceed ten percent (10%) of the total bid price.**

(B) Remove PVC Ditch Liner (Bid Item No. 2)

General: Removal of the PVC liner from upper section of the existing bench drainage ditch is required to prepare the earthwork area for cover soil salvage and grading. The location is shown on Sheet 3 of the project drawings. Disposal of debris generated by completion of this task is covered under Section IV, Technical Specifications, Subsection 400.00: Debris Disposal. The edges of the liner are buried in anchor trenches extending along the edges of the drainage ditch. The buried edge must be removed to at least the depth of cover soil salvage. Where the removed section is separated from the section of PVC liner that will be left in place, the upper edges of the remaining section will be anchored in 18-inch deep anchor trenches. It is estimated that approximately 1,580 square yards of PVC ditch liner will be removed.

General Work Included:

- Cut all PVC liner from the designated section of bench drainage ditch.
- Remove PVC liner from anchor trenches around the perimeter of the removed section.
- Anchor upper edge of the PVC liner that is left in place.
- Dispose of PVC liner debris.

Measurement: No measurement will be made for this bid item.

Payment: Payment shall be made at the lump sum price bid for "Remove PVC Ditch Liner," which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(C) Salvage and Stockpile Cover Soil (Bid Item No. 3)

General: Contractor shall salvage and stockpile all available cover soil from the specified area on the Alder Gulch Dump. Cover soil stripping limits, recovery depths, and the designated stockpile area are shown on Sheet 3 of the project drawings. The Engineer will stake the stripping limits. Cover soil will be stripped and stockpiled in accordance with the provisions of Section IV, Technical Specifications, Subsection 310: Topsoil.

It is estimated that 15,400 bank cubic yard of soil will be recovered from the specified stripping area, which covers 7.7 acres. Recovery of the specified quantity of cover soil in accordance with the stripping depths shown on Sheet 3 of the project drawings is necessary to provide adequate cover over the liner, which is to be installed on the mine dump. Any over-excavation will produce material that is not suitable for placement over the GCL liner and will also affect the material balance in the grading plan. Consequently, a series of test pit will be dug to reveal the contact between the cover soil and waste rock. The Engineer will inspect each test pit and will approve the excavation depth. Test pit information will be used to control the stripping depth in the adjacent area.

The specified stockpile area has been selected to minimize disturbance to previously reclaimed areas. The Contractor will be allowed to alter the design of the pile within the specified area and can extend the disturbance limit further up the steep wall on the east side of the stockpile. However, the Engineer must approve any additional disturbance to the reclaimed mine area.

Work Included:

- Clear and grub.
- Excavate test pits.
- Excavate all available cover soil from the specified area.
- Load and haul salvaged cover soil to the stockpile area.
- Protect stockpiles during construction.
- Dust control.

Measurement: This bid item will be measured by the actual number of cubic yards of cover soil excavation as determined by digital terrain model (DTM) subtractions comparing the survey of the existing terrain to a survey of the stripped area. Contractor shall coordinate work to allow sufficient time for Engineer to survey the stripped area.

Payment: Payment shall be made at the unit price bid per cubic yard for "Salvage and Stockpile Cover Soil" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(D) **Grade Alder Gulch Dump to Construct Liner Sub-grade (Bid Item No. 4)**

General: Following the cover soil stripping operation, the top bench on the Alder Gulch Dump will be graded in strict accordance with the plans, configurations, and elevations shown on Sheet 4, Sheet 5, Sheet 6, Sheet 7 and Sheet 8 of the project drawings. As shown on the drawings, the intent of the grading plan is to reshape the top of the dump into a drainage basin that outlets onto the access road at the easternmost edge of the graded area. Under the provisions of a separate bid, nearly the entire surface of this drainage basin will be covered with a geosynthetic clay liner to limit infiltration into the dump.

The grading area is estimated at 8.18 acres. It requires 24,070 bank cubic yards of cut. The balanced cut/fill grading is designed to produce the sub-grade for the liner, which has a specified design area. The desired shape of the drainage basin will be created by cutting in-place dump material from specified areas and using this material to construct a low ridge along the entire southwest edge of the dump. The top of the ridge will be graded to provide a trail along which the liner can be anchored. Although the outside slope of the ridge can be modified to adjust for actual shrinkage or swell, grading in the area between the edge of the access road and the top of the ridge must be completed in close conformance with the designs defined by the "Sub-grade design points" listed and shown on Sheet-8 of the project drawings. In addition, Contractor shall be aware that a buried pipeline, which is shown on the drawings and an electrical line extend through the grading area. The grading plan has been designed to avoid damage to these facilities.

All slopes will be blended evenly to provide continuity of slopes and to provide smooth transitions between different slopes. All excavated and filled sections and all adjacent transition areas shall be reasonably smooth and free from irregular surface changes. The maximum allowable slope that can be constructed within the liner area is 4H:1V. Outside slopes shall be at least 3H:1V except where the grade transitions into an existing undisturbed slope. The outside slopes will drain to the existing dump bench drain system. In the area where the upper portion of the existing bench drainage ditch must be removed, a new catchment ditch will be extended from the existing ditch along the base of the outside slope. Earthwork shall be performed in accordance with Section IV, Technical Specifications, Subsection: 300.00 Earthwork. The source location for construction water is shown on Sheet-2 of the project drawings.

General Work Included:

- Rip.
- Load.
- Haul.
- Cut/fill.
- Grade and contour.
- Construct catchment ditches
- Dust control.

Measurement: This bid item will not be measured for payment. The completed sub-grade must be inspected and approved by the Engineer before any portion of the lump sum payment is made.

Payment: Payment shall be made at the lump price bid for "Grade Alder Gulch Dump to Construct Liner Sub-grade" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(E) **Spread Stockpiled Cover Soil Over Graded Outside Slope (Bid Item No. 5)**

General: After the areas outside the liner installation and anchor trench areas have been graded and accepted by the Engineer, 2,800 cubic-yards of stockpiled cover soil will be spread evenly over the prepared area and will be brought to a friable condition ready for seeding. The specified quantity will provide a cover thickness of 8 to 9 inches over the specified area. This work will be completed in accordance with the provisions of Section IV, Technical Specifications, Subsection 310: Topsoil.

Work Included:

- Load and haul cover soil from stockpile.
- Spread cover soil evenly and bring it to a friable condition ready for seeding.

Measurement: This bid item will be measured by the actual number of cubic yards of cover soil that is excavated from stockpile and spread over the specified area. The quantity for payment will be determined by load count. Contractor shall maintain accurate load counts on a daily basis for each piece of haulage equipment. Engineer will make appropriate measurements to determine the load capacity in cubic yards for each truck used in the operation. Contractor shall provide daily load count to Engineer, partial loads will either not be counted or will be counted as a fraction of a load.

Payment: Payment shall be made at the unit price bid per cubic yard for "Spread Stockpiled Cover Soil Over Graded Outside Slope" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(F) **Compact Liner Sub-grade (Bid Item No. 6)**

General: After the liner sub-grade has been graded and the Engineer has accepted the grading, Contractor shall use a vibratory smooth drum compactor to prepare this surface for liner installation. The compactor shall be capable of delivering a minimum of 30,000 pounds of centrifugal force. A minimum of three passes of the compactor across all areas will be required to make the sub-grade acceptable. Compaction and repairs shall continue at no additional cost to the Owner until the Engineer approves the sub-grade for liner installation. This work shall be provided in accordance with the applicable provisions of Section IV, Technical Specifications, Subsection 500.00: GCL Liner Placement (see Part 500.3.3 Earthwork). The liner installation area, which covers 5.82 acres, is described on Sheet 9 and Sheet 10 of the project drawings.

Work Included:

- Remove any vegetation or debris from the surface.
- Repair crack and voids.
- Grade.
- Apply water for compaction.
- Compact surface.

Measurement: This bid item will not be measured for payment.

Payment: Payment shall be made at the lump sum price bid for "Compact Liner Sub-grade" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(G) Install Owner Supplied Drainage Panel Under-Liner (Bid Item No. 7)

General: 19,475 square feet of geosynthetic under-liner will be provided by the Owner and will be delivered to the site. Contractor shall provide all necessary equipment; labor and supervision to install the liner on the prepared and approved liner sub-grade. The under-liner will be installed only in the "Drainage Panel" area, where runoff will collect and flow along the bottom of the drainage swale. The under-liner will be totally covered by the geosynthetic clay liner "Drainage Panel". The under-liner will be installed in three sections:

1. The bottom section will be at the basin outflow near the edge of the access road. This section will be 290 feet long and 40 feet wide.
2. The middle section will be 185 feet long and 25 feet wide.
3. The top section will be 130 feet long and 25 feet wide.

The under-liner will be installed in close conformance with the lines and configurations shown on Sheet 9 of the project drawings. Seams will be constructed with 2-foot wide overlaps.

Work Included:

- Locating the work.
- Liner placement.
- Anchoring.
- Trimming.
- Protecting.
- Coordinating installation.
- Liner repairs.

Measurement: This is a lump sum bid item and will not be measured for payment

Payment: Payment shall be made at the lump price bid "Install Owner Supplied Drainage Panel Under-Liner" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(H) Install Owner Supplied Geosynthetic Liner (Bid Item No. 8)

General: 130 rolls of geosynthetic clay liner have been purchased by the Owner to cover the 5.82-acre liner installation area. The Owner has also purchased sufficient bentonite for constructing seams. The Owner will deliver these materials to the site. Contractor shall provide all necessary equipment; labor and supervision to install the liner over the prepared/approved subgrade and the Drainage Panel Under-Liner in accordance with the provisions of Section IV, Technical Specifications, Subsection 500: GCL Liner Placement and in close conformance with the lines and configurations shown on Sheet 9 and Sheet 10 of the project drawings.

Work Included:

- Receive and store products.
- Locate the work.
- Construct anchor trenches in close conformance with the anchor trench location information provided on the drawings.
- Rollout and align sections with the specified overlaps.
- Construct seams with bags of bentonite.
- Anchor liner.
- Trim section ends.
- Protect liner from damage.
- Coordinating installation with sub-grade work, under-liner work, and cover soil work.
- Liner repairs.

Measurement: This is a lump sum bid item and will not be measured for payment.

Payment: Payment shall be made at the lump sum price bid for "Install Owner Supplied Geosynthetic Liner" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(I) **Spread Cover Soil Over Installed Liner and Anchor Trenches (Bid Item No. 9)**

General: In conjunction with geosynthetic clay liner installation and anchoring, Contractor shall cover the liner and trench areas with 18 inches of cover soil obtained from the following source areas:

1. Tailings Stockpile – Approximately 200 cubic yards to be determined prior to construction by load count.
2. Existing Cover Soil Stockpile – Containing 1270 cubic yards as determined by a recent survey of the pile.
3. Cover Soil Stockpile Area – Approximately 15,400 bank cubic yards will be salvaged and placed in this area during construction. An estimated 2800 cubic yards will be removed under Bid Item 5-Spread Stockpiled Cover Soil Over Graded Outside Slope leaving 12,600 cubic yards for liner cover.

The specified quantity of 14,070 cubic yards will provide approximately 18 inches of cover material over the installed liner. Sheet 11 of the project drawings shows the outline of the placement area and the locations of the stockpiles. The cover soil will be spread evenly over the liner area and will be brought to a friable condition ready for seeding. This work will be completed in accordance with the provisions of Section IV, Technical Specifications, Subsection 500: GCL Liner Placement (in particular, Part 500.3.5 Cover Placement) and with the general provisions of Subsection 310: Topsoil.

CONTRACTOR will be required to maintain load counts to the separate placement areas in order to distribute the topsoil as accurately as possible. Because damage to the liner and seams will result if heavy construction equipment comes in close contact with the liner, a minimum thickness of 12 inches of cover shall be maintained between equipment tires, tracks, buckets or blades and the liner at all times during the covering process. Contractor shall employ equipment and methods that will protect liner.

Work Included:

- Load and haul cover soil from stockpile.
- Dump and spread cover soil evenly.
- Use equipment and methods that will protect liner.
- Protect liner from damage and repair any damage to liner or to seams.

- Coordinating installation with under-liner work and liner installation.
- Provide dust suppression.
- Roadwork.
- Bring cover soil it to a friable condition ready for seeding.

Measurement: This bid item will be measured the actual number of cubic yards excavated from stockpiles and placed over the specified area. The quantity for payment will be determined by load count and will be adjusted by the Engineer to agree with the previously determined quantities for cover soil materials in stockpile less the quantity of cover soil measured for payment under Bid Item 5-Spread Stockpiled Cover Soil Over Graded Outside Slope. This calculation shall be the sum of the Tailings Stockpile Quantity Plus (+) 1270 CY (Existing Cover Soil Stockpile) Plus (+) Payment Quantity for Bid Item 3 (Salvage and Stockpile Cover Soil) Minus (-) Payment Quantity for Bid Item 5 (Spread Stockpiled Cover Soil Over Graded Outside Slope) Equals (=) Adjusted Payment Quantity for Bid Item 9. Contractor shall provide daily load count to Engineer.

Payment: Payment shall be made at the unit price bid per cubic yard for "Spread Cover Soil Over Installed Liner and Anchor Trenches" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

(J) **Revegetation (Bid Item No. 10)**

General: Contractor will supply all materials and supplies required for seeding and fertilizing the area disturbed by construction. Fertilizing and seeding shall be accomplished in accordance with the provisions of Technical Specifications, Subsection 900: Revegetation and this special provision. The 10.76-acres scheduled for this work are outlined on the Sheet 11 of the project drawings.

Prior to seeding, fertilizer will be blended with the cover soil. All areas will be fertilized with an inorganic chemical fertilizer with the following nutrients:

FERTILIZER MIX	Variety	Pounds/Ac
Nitrogen (46% N)	Urea	45
Phosphorus (52% P)	P ₂ O ₅	18
Potassium (62% K)	K ₂ O	120

Contractor shall supply seed in accordance with the following seed mixture. In areas that are seeded by the broadcast method, the specified seeding rate will be doubled.

GRASS FORB MIX	Variety	Pounds of Pure Live Seed
Alfalfa	Travois	2.50
Red Clover		1.00
Slender Wheatgrass	Pryor	1.50
Big Bluegrass	Sherman	1.00
Pubescent Wheatgrass	Luna	3.00
Meadow Brome	Regar	2.00
Hard Fescue	Durar	1.50
Canada Bluegrass	Talon	2.00
Yarrow	White	0.25
Blue Flax	Appar	0.25
Rubber Rabbitbrush	ThunderCreek	<u>0.15</u>
Seed Mix		15.15

Contractor shall seed and fertilize the following designated areas:

1. Alder Gulch Dump - An estimated 8.21 acres;
2. Cover soil stockpile and staging area - An estimated 2.55 acres.

Work Included:

- Supply seed and fertilizer.
- Bring soil to a friable condition by disking or raking.
- Incorporate fertilizer.
- Drill or broadcast seed.

Measurement: This bid item will be measured by the number of acres (to the nearest 0.01 acre) seeded and fertilized as determined by plane surveys of the areas.

Payment: Payment shall be made at the following unit prices bid for "Revegetation" which payment shall constitute full compensation for all labor, equipment, materials, and incidentals necessary to accomplish the work as specified.

11. SUPERVISION BY CONTRACTOR

Paragraphs 6.01 and 6.02 of the General Conditions and Article 6 of the Supplementary Conditions contain requirements concerning supervisory personnel on site. Resumes of supervisory personnel shall be submitted to Engineer prior to the start of work. The resident superintendent shall not be replaced without written notice to Owner and Engineer.

12. SUBLETTING OR ASSIGNING THE CONTRACT

Contractor shall perform with its own organization contract work amounting to not less than 50 percent of the original contract price, excluding any Specialty Items designated by Owner (any Specialty Items shall be identified as such in Section II, Bid Proposal). Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the original contract price before computing the amount of work required to be performed by Contractor's own organization.

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime Contractor and equipment owned or rented by the prime Contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime Contractor.
- b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

The contract amount upon which these requirements are set forth includes the total cost of all Lump Sum and Unit Price items based on Estimated Quantities (see Special Provisions, Measurement and Payment).

13. CONSTRUCTION STAKING

Engineer will furnish all primary control and establish control coordinates for locating the principal components of the Work with a suitable number of benchmarks adjacent to the Work. The Engineer will develop and make all detailed surveys needed for construction of the work involved. Contractor shall be responsible for the preservation of all primary and other control coordinate stakes. If control stakes are carelessly or willfully destroyed or disturbed by Contractor, the cost for replacing it by Engineer will be charged against him and such costs will be deducted from the payment for the work.

Control points located within areas that must be disturbed can be removed without replacement at Engineer's discretion.

Engineer will perform all quantity calculation surveys using the methods described in Special Provisions, Measurement and Payment. Copies of the survey notes and calculations will be supplied to Contractor upon request.

Contractor will note any discrepancies between Engineer's calculation and Contractor's calculation within 10 days of Contractor's receipt of Engineer's notes and calculations. Any discrepancies will be worked out to both parties' satisfaction. If Owner and Contractor cannot mutually agree, the procedures for resolving disputes shall be in accordance with the General Conditions.

14. USE OF PREMISES

Contractor shall confine his equipment, storage of materials, and construction operations to the areas shown on the Drawings or as set forth in Paragraph 6.11 of the General Conditions. Only authorized personnel are allowed to be on site during construction activities. Contractor shall not unreasonably encumber the site or public rights-of-way with his materials and construction equipment. Should Contractor deem it necessary to work outside of the general construction areas shown, it shall be necessary for Contractor to obtain written approval by Engineer.

Contractor shall comply with all reasonable instructions of Engineer and the ordinances and codes of government agencies regarding signs, traffic, fires, explosives, danger signals and barricades.

Contractor shall notify the landowners of the need to temporarily remove or relocate fences for access to the work and shall coordinate such activities with the respective landowners in regards to removal, relocation, prior to commencing work, and restoration of fences upon completion.

15. SITE CLEANUP AND DECONTAMINATION

Contractor shall periodically, or as directed by Engineer, during the course of the work remove and dispose of all surplus construction materials and debris and keep the project area and public rights-of-way reasonably clean. Upon completion of the work, Contractor shall remove all temporary construction facilities, debris, and unused materials provided for the project, leaving the project site in a neat and clean condition.

Contractor will provide for vehicle and equipment decontamination, which includes preparing an area where vehicles and equipment will be decontaminated and decontaminating all vehicles and equipment as specified. Only vehicles that come in contact with contaminated soil or other solid or liquid hazardous waste shall require decontamination. The design and construction of the decontamination area, including wastewater collection and storage facilities, shall be approved by Engineer prior to use. Contractor shall be liable and responsible for any release of wastewater or hazardous substances from the work areas.

Costs of all cleanup work and decontamination shall be considered incidental to other items of work and no additional compensation will be allowed. All debris shall be buried as specified or disposed of off-site in a state licensed solid waste management facility. All decontaminated wastewater shall be disposed of through evaporation or otherwise in accordance with law.

16. RESTORATION OF DISTURBED AREAS BY CONTRACTOR

All areas disturbed by Contractor's operations such as, but not limited to, access roads, staging areas, haul roads, loading operations and disposal operations shall be restored by grading to the original contours as set forth in the Contract Documents. Contractor shall include the cost of this work in the price bid for other items of work, and no separate compensation will be allowed unless specifically provided for elsewhere in the Contract Documents.

17. USE OF EXPLOSIVES

The Contractor must comply with all local, state and federal regulations governing the use of explosives and shall be responsible for obtaining the necessary blasting permits. The Contractor shall submit a blasting plan to the Engineer for approval. This plan is for record and construction purposes and shall not relieve the Contractor from using the proper blasting procedures. Additionally, the Contractor shall be

bound by and adhere to the latest Edition of the Montanan Department of Highways "Standard Specifications for Road and Bridge Construction" dealing with explosives. The Contractor shall be required to obtain insurance required for the use of explosives and shall not commence work until such insurance had been approved by the Owner.

No explosives are anticipated to be required to complete this project.

18. WEED CONTROL

Prior to mobilizing equipment on the project site, Contractor shall clean his equipment and vehicles ensure no weeds are imported. If weeds are present at the project site, Contractor shall clean his equipment prior to moving to a new site. If there is an abnormal growth of noxious weeds on the project site after construction as determined by Engineer or local weed control authority, Contractor shall be responsible for weed control under Contractor's General Warranty and Guarantee, General Conditions, Paragraph 6.19.C.

19. TRAFFIC CONTROL PLAN

Contractor shall schedule his construction operations in a manner which will ensure that: 1) the safety and convenience of motorists and pedestrians, and the safety of construction workers, are adequately met at all times; and 2) the project is completed in a manner most beneficial to the project as a whole. All signing and striping shall conform to the standards set forth in the Manual of Uniform Traffic Control Devices (MUTCD).

Traffic control shall be provided in full compliance with MUTCD during materials hauling and equipment operation or transport along public roadways. Control shall include necessary signing, flag-persons, barricades, and hazard markers. At least one-way traffic shall be maintained at all times with continuous passage for emergency vehicles from either direction. At the conclusion of daily construction activities, Contractor shall ensure that proper traffic control measures remain in effect overnight and through the weekend. This includes protecting any open excavations or other hazards.

The cost of traffic control shall be considered incidental to the Contract, unless otherwise specified in these Special Provisions.

20. ORDER OF WORK

The following is the suggested order of work. Many of the work items can be accomplished simultaneously. This suggested order of work is intended as a guideline for Contractor and may be changed during the development of the construction schedule.

1. Bonding, Insurance, Mobilization
2. Provide Water for appropriate subsequent items
3. Clearing
4. Remove Ditch Liner and Debris
5. Strip and Stockpile Cover Soil
6. Earthwork Grading
7. Replace Cover Soil on Outside Slopes
8. Compact Liner Subgrade
9. Install Drainage Panel Under-Liner
10. Install Geosynthetic Clay Liner
11. Place Cover Soil Over GCL and Anchor Trenches
12. Debris Disposal
13. Summer Demobilize
14. Fall Remobilize
15. Revegetation
16. Final Demobilize

21. SUBMITTALS

All shop drawings, samples and other submittals required by the contract shall be submitted in accordance with Paragraph 6.17 of the General Conditions. At a minimum the following submittals must be received and approved by Engineer before a Notice to Proceed will be issued. As an aid to Contractor the following submittals will be required. This list is not considered to be exhaustive and additional submittals may be requested by Owner or Engineer.

For all submittals requiring review, Contractor shall submit 3 copies of the required documents to Engineer.

<u>Submittal</u>	<u>Submittal Description</u>
Health and Safety Plan	Contractor is responsible for developing and enforcing his own site specific Health and Safety Plan. The Plan must be written specifically for this project as described in Paragraph 6 of these Special Provisions.

APPENDIX A:

Miscellaneous Forms

APPENDIX A

MISCELLANEOUS FORMS TABLE OF CONTENTS

**Notice of Award
Agreement
Notice to Proceed
Approval of Subcontractors
Substitution Request Form
Schedule of Values for Contract Payment
Payment Request
Schedule of Material on Site
Yardage Agreement Form
Work Directive Change
Change Order
Affidavit on Behalf of Contractor
Contractor's Certificate of Completion
Certificate of Substantial Completion
Consent of Surety Company to Final Payment
Certificate of Acceptance**

NOTICE OF AWARD

TO: _____

DATE: _____

PROJECT: Zortman Alder Gulch Dump Project
DEQ Contract No.: 507023

PROJECT DESCRIPTION: _____

The Owner has considered the Bid submitted by you for the above-described Work in response to its Invitation for Bid dated _____, 2007 and Instructions to Bidders.

You are hereby notified that your bid has been accepted for items in the amount of \$_____.

Within five (5) days after receipt of this Notice of Award (Saturdays, Sundays and legal holidays excluded) or as Owner and Contractor otherwise mutually agree, you are required (Article 13, Instructions to Bidders) to execute and deliver to Owner a copy of the Acceptance of Notice of Award, all executed copies of the Agreement and the properly issued and effective Performance and Payment Bonds, Certificates of Insurance and copies of applicable insurance policies.

If you fail to execute said Agreement and to furnish said Bonds and Insurance within five (5) days from the date of this Notice, said Owner will be entitled to consider all your rights (arising out of the Owner's acceptance of your Bid) as abandoned and to forfeiture of your Bid Bond. The Owner will be entitled to exercise such other and further rights as may be granted by law.

Please return an acknowledged copy of this Notice of Award to the Owner.

Dated _____ day of _____, 20____.

OWNER:

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Title: _____

ACCEPTANCE OF NOTICE OF AWARD

Receipt of the above Notice of Award is hereby acknowledged this _____ day of _____, 20____.

CONTRACTOR:

By: _____

Title: _____

AGREEMENT

OWNER: The Montana Department of Environmental Quality
CATEGORY OF IMPROVEMENTS: Mine Reclamation
CONTRACT TITLE: Zortman Alder Gulch Dump Project
CONTRACT NUMBER: DEQ Contract No. 507023

THIS AGREEMENT made as of the _____ day of _____, 2007, by and between the Montana Department of Environmental Quality, hereinafter called Owner, and _____ with legal address and principal place of business at _____ hereinafter called Contractor. Owner and Contractor in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.1 Contractor shall perform the work as specified or indicated in the Contract Documents. The work is summarized in the Special Provisions.

ARTICLE 2. ENGINEER

2.1 Spectrum Engineering, 1413 4th Ave N. Billings, MT 59101, will act as Engineer in connection with completion of the work in accordance with the Contract Documents, unless another engineer is designated by Owner.

ARTICLE 3. CONTRACT TIMES

3.1 The work will commence as provided in Article 2 of the Conditions of the Contract. All Work shall be substantially complete, as defined in the General Conditions, **within 140 consecutive calendar days**, as adjusted under Article 12 of the Contract Documents.

3.2 Contractor agrees that the work shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Times stated above. It is expressly understood and agreed, by and between Contractor and Owner, that the Contract Times are reasonable for the completion of the work, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

ARTICLE 4. CONTRACT PRICE

4.1 Owner will pay Contractor for performance of the work in accordance with the Contract Documents in current funds at the Total Contract Price appearing in the Contractor's Bid Form attached to this Agreement.

ARTICLE 5. APPLICATIONS FOR PAYMENT

5.1 Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

ARTICLE 6. PROGRESS AND FINAL PAYMENTS

6.1 Owner will make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, monthly during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values provided for in Paragraph 14.01 of the General Conditions.

6.2 Prior to Substantial Completion, and so long as Contractor is performing by the terms of the Agreement, progress payments will be in an amount equal to 95 percent of the value of the work completed, less, in each case, the aggregate of payments previously made [less the additional retainage of \$1000 dollars per Section 18-2-404(2)]. Owner reserves the right without prejudice to any other remedy to increase the retainage, if Owner determines that Contractor is not performing in accordance with the terms of this Agreement.

6.3 Upon Substantial Completion of the principal elements of the Work, Owner may, in its discretion, deliver a portion of the retainage to Contractor.

6.4 Upon final inspection and acceptance of all of the work, in accordance with Paragraph 14.07 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer retaining \$1,000 until termination of the Agreement, as required by Section 18-2-404(2), MCA.

ARTICLE 7. LIQUIDATED DAMAGES

7.1 Owner and Contractor acknowledge that time is of the essence in the performance of the work required under this Agreement and that Owner will suffer financial and other losses if the work is not completed within the Contract Times specified in Article 3 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the work is not completed on time. Accordingly, in order to avoid the time, expense, delay, and difficulty in proving or disputing such damages and to provide certainty and predictability for both parties, instead of requiring any such proof, Owner and Contractor agree that Contractor shall pay Owner as liquidated damages for delay

(and not as a penalty) the amount of \$750.00 per day for each day beyond the Contract Time that the work is not substantially complete.

The completion dates specified here are subject to adjustment in accordance with Paragraph 7.1 of the Supplementary Conditions and Paragraph 12.03 of the General Conditions, provided that Contractor shall furnish Owner the required notification of such delays in accordance with Paragraph 12.02 of the General Conditions. An adjustment of Contract Time under these provisions for delays beyond the control of the Contractor (acts or neglect by Owner or other persons, fires, floods, epidemics, abnormal weather conditions or acts of God) may effectively postpone the trigger date for liquidated damages.

ARTICLE 8. CONTRACT DOCUMENTS

8.1 The Contract Documents which, together with this executed document, comprise the Agreement between Owner and Contractor are attached hereto and made a part hereof and consist of the following:

8.1.1 The Instructions to Bidders

8.1.2 Contractor's submitted Bid Form and Questionnaire Responses, together with any properly and timely submitted amendments or supplements thereto, and other documentation requested by Owner and submitted by Contractor with the Bid or prior to the Notice of Award;

8.1.3 The required and properly issued Construction Performance Bond, Construction Payment Bond and other required bonds and certificates of insurance;

8.1.4 Notice of Award;

8.1.5 Notice to Proceed;

8.1.6 General Conditions, EJCDC Document 1910-8, 1996 Edition (modified);

8.1.7 Supplementary Conditions, Parts I and II;

8.1.8 Special Provisions;

8.1.9 Technical Specifications;

8.1.10 Drawings: The Contract Drawings are in Section V.

8.1.11 Addenda numbers _____ through _____ modifying documents which are part of this Agreement; and

8.1.12 All properly executed or issued amendments and modifications of this Agreement, including Written Amendments, Change Orders, Work Change Directives, Field Orders or Engineer's written interpretations and clarifications issued after execution of this Agreement.

ARTICLE 9. LIAISONS

9.1 Notices to be given by one party to the other shall, unless the Contract Documents provide otherwise, be sent to the following contacts for each party. Required written notices shall be sent by registered or certified mail, return receipt requested, or by similar service. A party may change a contact person(s) or address given below by notifying the other party in writing.

For DEQ/Owner:

For Contractor:

Department of Environmental Quality
Attention: Wayne Jepson
Permitting and Compliance Division
P.O. Box 200901
1520 East Sixth Avenue
Helena, MT 59620
(406) 444-0529

with a copy to:

Department of Environmental Quality
Attention: Mr. John North - Legal Counsel
P.O. Box 200901
1520 East Sixth Avenue
Helena, MT 59620
(406) 444-2018

ARTICLE 10. MISCELLANEOUS

10.1 Terms used in this Agreement, which are defined in Article 1 of the Conditions of the Contract, shall have the meanings assigned in the Conditions of the Contract.

10.2 Neither Owner nor Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his/her interest under any of the Contract Documents; and, specifically but without limitation, Contractor shall not assign any monies due or to become due without the prior written consent of Owner. In case Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause providing that the right of the assignee in and to any monies due or to become due to Contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

10.3 Owner and Contractor each binds himself, his/her partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.4 The Contract Documents constitute the entire agreement between Owner and Contractor and, except as expressly provided in the Contract Documents themselves, may be altered, amended, or repealed only by a Written Modification signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement shall become effective on _____, 2007.

OWNER:

CONTRACTOR:

Montana Department of Environmental Quality

Name:

By: _____

By: _____

VICKI J. WOODROW
DEQ Contracts Officer

Name:
Title:

Approved for legal content by:

(CORPORATE SEAL)(If Applicable)

JOHN NORTH
Legal Counsel, DEQ

Date: _____

Note: If Contractor is a corporation, a certificate evidencing the principal's authority to sign on behalf of the corporation must accompany the executed Agreement.

NOTICE TO PROCEED

TO: _____

DATE: _____

PROJECT: **Zortman Alder Gulch Dump Project**

DEQ Contract No. 507023

In accordance with the Agreement dated _____, 2007, you are hereby notified to commence Work no later than _____, 2007 and you are to complete the Work within 140 consecutive calendar days thereafter. The date of completion of all Work is, therefore, _____, 2007.

OWNER:

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Title: _____

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above Notice to Proceed is hereby acknowledged this _____ day of _____, 2007.

CONTRACTOR:

By: _____

Title: _____

APPROVAL OF SUBCONTRACTORS

PROJECT TITLE: **Zortman Alder Gulch Dump Project**

DEQ Contract No. 507023

CONTRACTOR: _____

Listed below are all of the subcontractors, which we propose to use on this project. Your approval of these subcontractors is requested.

We certify that these subcontractors, as listed, have been advised of the labor standards and provisions applicable to this project and that these provisions, as incorporated in the Contract between the Owner and the undersigned Contractor, will be incorporated in the contracts between the Contractor and the listed subcontractors.

Name And Address of Subcontractor	Montana Contractor Registration Number & Effective Date	Type of Work	Approximate Value of Subcontract
		TOTAL:	

Any deviation from this list shall be approved by the Owner prior to the subcontractor conducting the work.

Signed by _____ Contractor _____ Date _____

Checked by _____ Engineer _____ Date _____

Approved by _____
Owner _____ Date _____

SUBSTITUTION REQUEST FORM

TO: _____

PROJECT: **Zortman Alder Gulch Dump Project**

We hereby submit for your consideration the following product instead of the specified item for the above project.

<u>Section</u>	<u>Paragraph</u>	<u>Specified Item</u>

Proposed Substitution: _____

Attach complete technical data, including laboratory tests, if applicable. Include complete information on changes to Drawings and/or Specifications which proposed substitution will require for its proper installation. **(Fill in blanks below.)**

- A. Does the substitution affect dimensions shown on Drawings? _____
- B. Will the undersigned pay for changes to building design, including engineering and detailing costs caused by the requested substitution?
- C. What affect does substitution have on other trades?
- D. Differences between proposed substitution and specified item?
- E. Manufacturer's guarantees of the proposed and specified items are:

_____ Same

_____ Different (explain on attachment)

The undersigned states that the function, appearance, and quality are equivalent or superior to the specified item.

Submitted by:

Checked by Engineer:

() Accepted () Accepted as Noted

() Not Accepted () Received too Late

Signature

Firm

By _____

Date _____

Remarks _____

Address

Approved by Owner:

Date _____

Telephone _____

Date _____

SCHEDULE OF VALUES FOR CONTRACT PAYMENT

PROJECT TITLE: **Zortman Alder Gulch Dump Project**

DEQ Contract No.: **507023**

CONTRACTOR:

Bid Item No.	Description of Item	Units Completed	Unit Price	Total Unit Cost		Lump Sum Price	Estimate of Percent Complete	
	TOTALS							

I hereby certify that the quantities and percentages above truly and accurately reflect the Work completed by Contractor on the Site in accordance with the Contract Documents.

Signed by _____ Contractor _____ Date _____

Approved by _____ Engineer _____ Date _____

DEQ PAYMENT REQUEST

PAYMENT REQUEST NO. _____

PAYMENT PERIOD: _____

PROJECT NAME: _____

DEQ CONTRACT NO.: _____

NAME OF THE CONTRACTOR: _____

ADDRESS OF THE CONTRACTOR: _____

PAYMENT SUMMARY INFORMATION							
DATE	PAYMENT REQUEST #	EARNED	RETAINAGE WITHHELD*	RETAINAGE RELEASED	GROSS PAYMENT	TAX 1%	NET PAYMENT
			\$ -		\$ -	\$ -	\$ -
			\$ -		\$ -	\$ -	\$ -
			\$ -		\$ -	\$ -	\$ -
			\$ -		\$ -	\$ -	\$ -
			\$ -		\$ -	\$ -	\$ -
			\$ -		\$ -	\$ -	\$ -
			\$ -		\$ -	\$ -	\$ -
	FINAL REQUEST				\$ -	\$ -	\$ -
TOTAL TO DATE		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

DATE	CONTRACT PRICE SUMMARY	
	Original Contract Price	
	CHANGE ORDER #1	
CONTRACT PRICE TO DATE		\$

MISCELLANEOUS INFORMATION	
TOTAL UNCOMPLETED TO DATE	\$ -
PERCENT COMPLETE TO DATE	0.00%

*RETAINAGE WITHHELD IS 5% PLUS \$1,000

LIGHTLY SHADED AREAS ARE AUTOMATICALLY CALCULATED

CURRENT PAYMENT REQUEST	
EARNED	\$ -
RETAINAGE WITHHELD	\$ -
RETAINAGE RELEASED	\$ -
GROSS PAYMENT	\$ -
TAX (1%)	\$ -
NET PAYMENT	\$ -

REQUESTED BY: _____ CONTRACTOR: _____
 SIGNATURE: _____
 DATE: _____

RECOMMENDED BY: _____ ENGINEER: _____
 COMPANY: Spectrum Engineering, Inc.
 DATE: _____

APPROVED BY: _____ OWNER: Montana Department of Environmental Quality
 SIGNATURE: _____
 DATE: _____

PAYMENT REQUEST NO. _____ (cont'd)

[illegible]

SCHEDULE OF MATERIAL ON SITE

PROJECT TITLE: Zortman Alder Gulch Dump Project

DEQ Contract No.: 507023

CONTRACTOR: _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

Item ____ Material Delivered _____
Material in Place _____
Material on Site _____

TOTAL MATERIAL ON SITE

(Attach applicable invoices or bills of lading.)

Verified by: _____ Contractor

Note: Provide invoice.

YARDAGE AGREEMENT FORM

Project Title:
DEQ Contract No.:

Zortman Alder Gulch Dump Project
507023

INITIAL BY CONTR. AND ENGR.	DATE	MATERIAL DESCRIPTION	DESCRIPTION OF MATERIAL MOVEMENT OR STOCK PILE	QUANTITY (CY)	UNIT PRICE

I hereby agree that the material and quantity described above has been moved or stockpiled on the date shown and that the said quantity has been agreed upon by both myself and the Engineer.

Signed by: _____

CONTRACTOR: _____

DATE: _____

ENGINEER: _____

WORK DIRECTIVE CHANGE

(Instructions on Reverse Side)

No. _____

PROJECT: Zortman Alder Gulch Dump Project

DATE OF ISSUANCE: _____

CONTRACTOR:

(Name,
Address)

OWNER:

DEQ Contract No.: 507023

CONTRACT FOR: _____

ENGINEER: _____

You are directed to proceed promptly with the following change(s):

Description:

Purpose of Work Directive Change:

Attachments: (list documents supporting change)

If a claim is made that the above change(s) have affected Contract Price or Contract Time, any claim for a Change Order based thereon will involve one of the following methods of determining the effect of the change(s).

Method of determining change in Contract Price:

☐ Time and Materials

☐ Unit Prices

☐ Lump Sum

☐ Other _____

Method of determining change in Contract Time:

☐ Contractor's Records

☐ Engineer's Records

☐ Other _____

Estimated increase (decrease) in Contract Price:
\$_____. If the change involves an
increase, the estimated amount is not to be
exceeded without further authorization.

Estimated increase (decrease) in Contract Time:
_____ days. If the change involves an increase, the
estimated time is not to be exceeded without further
authorization.

RECOMMENDED:

By: _____
Engineer

AUTHORIZED:

By: _____
Owner

ACCEPTED:

By: _____
Contractor

WORK DIRECTIVE CHANGE

INSTRUCTIONS

A. GENERAL INFORMATION

This document was developed for use in situations involving changes in the Work which, if not processed expeditiously, might delay the Project. These changes are often initiated in the field and may affect the Contract Price or the Contract Time. This is not a Change Order, but only a directive to proceed with Work that may be included in a subsequent Change Order.

For supplemental instructions and minor changes not involving a change in the Contract Price or the Contract Time, a Field Order may be issued.

B. COMPLETING THE WORK DIRECTIVE CHANGE

Engineer initiates the form, including a description of the items involved and attachments.

Based on conversations between Engineer and Contractor, Engineer completes the following:

METHOD OF DETERMINING CHANGE, IF ANY, IN CONTRACT PRICE: Mark the method to be used in determining the final cost of Work involved and the net effect on the Contract Price. If the change involves an increase in the Contract Price and the estimated amount is approached before the additional or changed work is completed, another Work Directive Change must be issued to change the time or Contractor may stop the changed Work when the estimated time is reached. If the Work Directive Change is not likely to change the Contract Price, the space for estimated increase (decrease) should be marked "Not Applicable".

METHOD OF DETERMINING CHANGE, IF ANY, IN CONTRACT TIME: Mark the method to be used in determining the change in Contract Time and the estimated increase or decrease in Contract Time. If the change involves an increase in the Contract Time and the estimated time is approached before additional or changed Work is completed, another Work Directive Change must be issued to change the time or Contractor may stop the changed Work when the estimated time is reached. If the Work Directive Change is not likely to change the Contract Time, the space for estimated increase (decrease) should be marked "Not Applicable".

Once Engineer has completed and signed the form, all copies should be sent to Owner for authorization because Engineer alone does not have authority to authorize changes in Price or Time. Once authorized by Owner, a copy should be sent by Engineer to Contractor.

Once the Work covered by this directive is completed for final cost and time determined, Contractor should submit documentation for inclusion in a Change Order.

THIS IS A DIRECTIVE TO PROCEED WITH A CHANGE THAT MAY AFFECT THE CONTRACT PRICE OR THE CONTRACT TIME. A CHANGE ORDER, IF ANY, SHOULD BE CONSIDERED PROMPTLY.

CHANGE ORDER

ORDER NO. _____

PROJECT TITLE: Zortman Alder Gulch Dump Project

DEQ Contract No.: 507023

CONTRACT DATE: _____

OWNER: _____

CONTRACTOR: _____

Change Orders must be accompanied by an itemized cost breakdown. You are hereby requested to comply with the following changes from the Contract Documents. (Show separate costs for materials, labor, equipment, and miscellaneous. Show percent where applicable.)

ITEM NO.	DESCRIPTION OF CHANGES - ESTIMATED QUANTITIES & UNITS	COST OF CHANGES					TOTAL COST
		MAT'L.S.	LABOR	EQUIP.	MISC.	TOTAL UNIT COST	
TOTAL COST							
GRAND TOTAL - THIS CHANGE ORDER							

Original Contract Price _____

Current Contract Price Adjusted by Previous Change Order

Cost this Change Order (+ or -) _____

New Contract Price including this Change Order _____

The completion date as set forth in the Contract Documents shall be (unchanged, increased, decreased) by _____ calendar days.

The date for completion of all work will be _____.

Description and Justification for Change:

1.

SURETY CONSENT

The Surety hereby consents to the aforementioned Contract Change Order and agrees that its bond or bonds shall apply and extend to the Contract as thereby modified or amended per this Change Order. The Principal and the Surety further agree that on or after execution of this consent, the penalty of the applicable Performance Bonds or Bonds is hereby increased by \$_____ (100 percent of the Change Order amount) and the penalty of the applicable Labor and Material Bond or Bonds is hereby increased by \$_____ (100 percent of the Change Order amount).

COUNTERSIGNED BY MONTANA
RESIDENT AGENT

SURETY

By: _____
Seal

Recommended by: _____
Engineer Date

Accepted by: _____
Contractor Date

Approved by: _____
Owner Date

AFFIDAVIT ON BEHALF OF CONTRACTOR

STATE OF _____)
COUNTY OF _____) ss

DEQ Contract No.: 507023

DATE: _____

I certify to the best of my knowledge and belief that all work has been performed and materials supplied in strict conformance with the terms and conditions of the corresponding contract documents between _____, the Owner, and _____, the Contractor, dated _____ for the Zortman Alder Gulch Dump Project, DEQ Contract No. 507023, and further declare that all bills for materials, supplies, utilities, and for all other things furnished or caused to be furnished by the above-named Contractor and used in the execution of the above Contract have been fully paid, and there are no unpaid claims or demands of State Agencies, subcontractors, materialmen, mechanics, laborers or any others resulting from or arising out of work done or ordered to be done by said Contractor under the above-identified Contract.

In consideration of the prior and final payments made and all payments made for authorized changes, the Contractor releases and forever discharges the Owner from any and all obligations and liabilities arising by virtue of said Contract and authorized changes between the parties hereto, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the Owner, arising out of or in any way relating to said Contract, and authorized changes.

This statement is made for the purpose of inducing the Owner to make Final Payment under the terms of the Contract, relying on the truth and statements contained therein.

Dated this _____ day of _____, 20____, at _____, Montana.

CONTRACTOR: _____

By: _____
Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL)

Notary Public for the State of Montana
Residing at _____
My commission expires _____

CONTRACTOR'S CERTIFICATE OF COMPLETION

TO (Owner): _____

DATE: _____

PROJECT TITLE: Zortman Alder Gulch Dump Project

DEQ Contract No. 507023

ATTN: Engineer _____

CONTRACT DATE: _____

FROM: _____
(Firm or Corporation)

This is to certify that I, _____, am an authorized official of _____, working in the capacity of _____ and have been properly authorized by said firm or corporation to sign the following statements pertaining to the subject contract:

I know of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed, and materials used and installed in every particular, in accordance with, and in conformity to, the Contract Plans and Specifications.

The contract work is now complete in all parts and requirements and ready for your substantial completion inspection.

I understand that neither the determination of the Engineer that the work is complete nor the acceptance thereof by the Owner shall operate as a bar to claim against the Contractor under the terms of the guarantee provisions of the Contract Documents.

CONTRACTOR: _____

By: _____
Title

Distribution: 1. Project Manager
2. Field Office
3. File

CERTIFICATE OF SUBSTANTIAL COMPLETION

TO: _____ OWNER

PROJECT TITLE: Zortman Alder Gulch Dump Project

DEQ Contract No.: 507023

CONTRACT DATE: _____

LOCATION: _____

PROJECT OR PART SHALL INCLUDE: _____

CONTRACTOR: _____

ADDRESS: _____

TELEPHONE NO: _____

SUBSTANTIAL COMPLETION DATE: _____

DEQ INSPECTION DATE: _____

ENGINEER: _____

PERFORMANCE BOND NO: _____

DATE OF BOND: _____

SURETY: _____

MONTANA AGENT: _____

ADDRESS: _____

The Work performed under this Contract has been inspected by authorized representatives of the Owner, Contractor, and Engineer, and the Project (or specified part of the Project, as indicated above) is hereby declared to be substantially completed on the above date.

DEFINITION OF SUBSTANTIAL COMPLETION

The date of substantial completion of a project or specified area of a project is the date when the construction is sufficiently completed, in accordance with the contract documents, as modified by any change orders agreed to by the parties, so the Owner can occupy or use it for the purpose for which it is intended.

A tentative list of items to be completed is appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents.

ENGINEER: _____

By _____
Authorized Representative Date

The Contractor accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the tentative list within the time indicated.

CONTRACTOR: _____

By _____
Authorized Representative Date

The Owner accepts the Project or specified area of the Project as substantially complete and will assume full possession of the project or specified area at _____ (time), on _____ (date). The responsibility for heat, utilities, security, and insurance under the Contract Documents shall be as set forth under "Remarks" below.

OWNER: _____

By _____
Authorized Representative Date

Remarks: (Attach additional sheet, if necessary)

**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**
(From AIA Document G707)

OWNER	[]
ENGINEER	[]
CONTRACTOR	[]
SURETY	[]
OTHER	

PROJECT: Zortman Alder Gulch Dump Project

TO (Owner)

DEQ Contract No.: 507023

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR:

In accordance with the provisions of the contract between the Owner and the Contractors indicated above, the _____, SURETY COMPANY, on bond
(here insert name and address of Surety Company)
of _____, CONTRACTOR, hereby approves of the final
(here insert name and address of Contractor)
payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to _____, OWNER, as set
(here insert name and address of Owner)
forth in the said Surety Company's bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this _____ day of _____, 20____.

Surety Company

Attest:
(Seal)

Signature of Authorized Representative

Title

NOTE: This form is to be used as a companion document to the Affidavit on Behalf of Contractor (current edition).

CERTIFICATE OF ACCEPTANCE

TO: _____ OWNER

PROJECT TITLE: Zortman Alder Gulch Dump Project

DEQ Contract No.: 507023

CONTRACT DATE: _____

LOCATION: _____

FINAL ACCEPTANCE DATE: _____

DEQ INSPECTION DATE: _____

ENGINEER: _____

PROJECT OR PART SHALL INCLUDE: _____

PERFORMANCE BOND NO: _____

DATE OF BOND: _____

SURETY: _____

CONTRACTOR: _____

MONTANA AGENT: _____

ADDRESS: _____

ADDRESS: _____

TELEPHONE NO: _____

ADDRESS: _____

The Work performed under this Contract has been inspected by authorized representatives of the Owner, Contractor, and Engineer, and the Project (or specified part of the Project, as indicated above) is hereby declared to be totally completed and accepted on the above date.

ENGINEER: _____

By _____
Authorized Representative Date

The Contractor accepts the above Certificate of Acceptance and agrees to abide by the conditions of the one-year warranty period which began on the substantial completion date.

CONTRACTOR: _____

By _____
Authorized Representative Date

The Owner accepts the Project as totally complete, and final payment is due to the Contractor as provided in the contract documents.

OWNER: _____

By _____
Authorized Representative Date

SECTION IV:

Technical Specifications

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 100.00 - MOBILIZATION / DEMOBILIZATION

100.1 GENERAL

- A. Work covered under this Section involves all Mobilization and Demobilization related items. Incidental work not mentioned elsewhere in the Contract Documents is also to be included in Mobilization.

Mobilization shall consist of preparatory work and operations performed by the Contractor, including, but not limited to, those necessary for the transportation and movement of personnel, equipment, supplies, and incidentals to the project site; for necessary permits; for the establishment of all offices and other facilities necessary for work on the project; for premiums on contract bonds; for insurance for the contract; and for other work and operations that must be performed or costs incurred before beginning work on the various items on the project site. Mobilization costs for subcontracted work shall be considered to be included. Costs associated with the Preconstruction Meeting shall also be included under Mobilization.

- B. The major elements of this Section include: OSHA safety training, staging area, project site roads, project area control, communication, construction dust suppression, and project completion.

100.1.1 Construction Staging Area

- A. The CONTRACTOR's construction staging area, equipment storage area, and materials lay down area shall be confined to those areas specifically approved by the ENGINEER.
- B. The CONTRACTOR is responsible for his own work area, storage area, and maintaining security. The staging area may be fenced at the CONTRACTOR's discretion. It shall be guarded and maintained by the CONTRACTOR adequately to prevent loss or damage to the CONTRACTOR's equipment and materials and to any instruments, equipment, or other materials brought to the site, in support of the project by the OWNER and ENGINEER. The CONTRACTOR accepts the liability of negligent damage or loss of said equipment during project life.

The cost to install a perimeter fence around the staging area, construct and maintain the staging area and/or equipment storage area in compliance with all regulations and final clean-up is to be borne by the CONTRACTOR and considered subsidiary to Mobilization.

- C. The disposal of solid waste, used petroleum products, sewage or any other trash discarded or waste materials is the responsibility of the CONTRACTOR.

SECTION IV TECHNICAL SPECIFICATIONS

- D. All products shall be stored in the Staging Area in such a manner as to conform to all local, state and federal regulations. Areas containing petroleum products, including fuel storage tanks or trucks, shall be bermed to contain spills and allow complete clean-up.

100.1.2 Access Roads

- A. This work shall consist of repairing damage to designated access roads, maintaining existing site access roads used as construction haul roads indicated on the Drawings and approved by the ENGINEER which are to be utilized by the CONTRACTOR.
- B. Access to the Zortman mine area is controlled with a locked gate just north of the town of Zortman. The CONTRACTOR will be supplied keys for use during construction. These must be returned at the completion of the construction.
- C. The main access road is also used by Spectrum Engineering for access to the Zortman Water Treatment Plant. Vehicle travel is right hand traffic and limited vehicle travel interaction is anticipated.

100.1.3 Secondary Access Roads

The CONTRACTOR will not be allowed to build or upgrade access roads nor travel cross-country by any routes not designated on the Drawings without prior written approval of the ENGINEER.

100.1.4 Construction Water

Potable water must be hauled in. The source of water for dust suppression will be Well ZL-163 located northeast of the Zortman Water Treatment Plant, which supplies the fresh water supply to the Plant. The CONTRACTOR will not be charged for water. The CONTRACTOR is responsible for maintaining the dust suppression water supply for the life of the project. The cost of maintaining the water supply is subsidiary to mobilization.

100.1.5 Shop Facilities

There is a large mining related shop immediately adjacent to the construction site. The landowner's father, Dale Ployhar at 406-538-8285, must be contacted to make financial/use arrangements if the CONTRACTOR wishes to use this building.

100.1.6 Communications

The CONTRACTOR shall have available on-site a method or means of emergency communications. Such devices can include cellular phones, radio phones, or other devices deemed appropriate. Cell phone coverage is available. Emergency phone service is available at the Zortman Water Treatment Plant as well as the Landusky

SECTION IV TECHNICAL SPECIFICATIONS

Mine Office.

100.2 PRODUCTS

Products to be provided under Mobilization include at a minimum: sanitary facilities; staging area; and water for dust suppression.

100.3 EXECUTION

100.3.1 Pre-Construction Activities

Upon receipt of Notice to Proceed, CONTRACTOR shall mobilize to the area approved for construction staging and furnish construction facilities as are necessary for successful completion of the Work. Equipment, fuel, etc shall not be staged on areas where topsoil is present. All the initial cost of construction work shall be included as Mobilization.

100.3.2 Final Cleanup

- A. The CONTRACTOR shall maintain a clean work site during construction. Personal trash and litter, including food wrappers, beverage containers, cigarette butts, paper, and other items shall be kept picked up and contained.
- B. At the end of construction, the CONTRACTOR shall clean all areas affected by construction including garbage, trash and debris which must be removed off-site to an approved landfill. All waste materials will be disposed of in accordance with State and Local requirements. The CONTRACTOR is responsible for securing an appropriate disposal site. Any petroleum products spills must be disposed of at an approved off-site facility.
- C. Damage by the CONTRACTOR's operations to any areas outside the designated work area will be repaired by the CONTRACTOR at the CONTRACTOR's expense.
- D. The cost of final cleanup is deemed to be included in the lump sum price bid for Mobilization/Demobilization.

END OF SECTION 100

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 300.00 - EARTHWORK

300.1 GENERAL

300.1.1 Scope of Work

- A. This section applies to all earthwork activities associated with this project including but not limited to excavation, dozing, loading, hauling, placement, dust control and associated road work.
- B. The CONTRACTOR shall furnish all labor, tools, supplies, and equipment necessary to complete the work as shown on the Drawings, as described herein, and as directed by the ENGINEER.
- C. The CONTRACTOR shall be solely responsible for all work required moving the specified quantities of waste rock from the designated regrade areas to the specified placement areas. Within the specified placement areas, CONTRACTOR shall distribute the material in a manner that facilitates compaction and GCL placement.

300.1.2 Site Conditions

It is the responsibility of the CONTRACTOR to examine the site personally and to conduct such additional investigations as he/she may deem necessary for the planning and execution of the work.

300.2 PRODUCTS

No products will be required under this specification.

300.3 EXECUTION

The CONTRACTOR shall excavate, doze, haul and/or place waste rock in conformance with the plans, areas, and quantities shown on the construction Drawings and as directed by the ENGINEER. The CONTRACTOR shall be responsible for the placement of correct quantities within each placement area. The presence or absence of the ENGINEER does not relieve the CONTRACTOR of his/her responsibility to excavate and place material in accordance with the plans shown on the Drawings.

- A. All of the following tasks are considered incidental earthwork operations: Dozing, loading, hauling, dumping, stockpiling, dust control, construction surveying, haul road maintenance, and construction and reclamation of temporary haul routes.
- B. Examine the areas and conditions under which work will be performed. Correct conditions detrimental to timely and proper completion of the work. Do not proceed until unsatisfactory conditions are corrected.

SECTION IV TECHNICAL SPECIFICATIONS

- C. Limits of earthwork placement areas are shown on the Drawings, or as approved by the ENGINEER. Minor refinements to the plans will be done by mutual agreement, in the interest of the project and based on field conditions, at no additional cost to the OWNER. It is the intent that the extent of these refinements, if any, be offsetting so that there is no significant increase or decrease in the Project work.
- D. ENGINEER has conducted detailed surveys of the excavation area prior to commencement of this project. This survey is available to the CONTRACTOR.

300.3.5 Dust Control

The CONTRACTOR shall provide dust control measures for health, safety, and convenience, the reduction of the dust nuisance to adjacent private and public lands and to minimize wind erosion. The measure shall consist of the application of water to the disturbed surfaces, project roads, and haul roads during the entire construction period. Water shall be uniformly applied in a fine spray by means of controllable pressure and spray bars or nozzles; and in such a manner that will avoid ponding or over wetting.

END OF SECTION 300

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 310.00 - TOPSOIL

310.1 GENERAL

310.1.1 Description

- A. This work consists of site development, excavating, hauling, depositing, spreading, and preparing for seeding of the topsoil and subsoil cover materials.
- B. The CONTRACTOR shall furnish all labor, tools, supplies, and equipment necessary to recover the topsoil and subsoil from designated areas and stockpiles and to spread these materials over the areas designated on the Drawings, as described herein, and as directed by the ENGINEER.

310.1.2 Materials

- A. One topsoil stockpile is located adjacent to the Shop. This pile shall be hauled and placed over the regraded reclamation area.
- B. Native topsoil consists on earthy materials located at or near the surface which supports vegetation due to its nutrient or textural characteristics. All areas requiring topsoil salvage are designated on the Drawings and will be staked in the field by the ENGINEER. The ENGINEER will monitor topsoil salvage operations and determine salvage depths. Seventeen depth probes showed coversoil depths of 6-inches to 30-inches with most of the site ranging from 16-inches to 21-inches. All coversoil shall be salvaged for later replacement.

310.2 PRODUCTS

No products are required.

310.3 EXECUTION

310.3.1 Salvage Topsoil

- A. The CONTRACTOR shall confine his operations to the areas defined on the grading and topsoil replacement plans.
- B. Before topsoil is recovered from any tree or shrub covered area, the recovery area will be thoroughly cleared and grubbed.
- C. Salvaged topsoil will be placed into stockpile.
- D. Topsoil placed into stockpiles will be protected from erosion by using straw bales, berms, ditch, or other temporary erosion control measures.

SECTION IV TECHNICAL SPECIFICATIONS

310.3.2 Placement

- A. Coversoil shall not be placed until the areas to be covered have been properly prepared and all construction work in the area has been completed and approved.
- B. Topsoil and subsoil shall be placed and spread to the depths indicated on the Drawings and in the Special Provisions. Topsoil shall be spread within a tolerance of plus or minus 1 inch of the specified thickness unless a greater tolerance is acceptable in the OWNER's judgment. A minimum of a 12-inch lift shall be placed over the GCL liner areas prior to running any equipment on the liner.
- C. Any soil containing grass roots shall be broken up before placement. After the topsoil has been spread, large clods and hard lumps will be broken up or removed from the area to be seeded.
- D. The soil will be brought to a friable condition to a depth of 12-inches in preparation for seeding. The CONTRACTOR shall in no way disturb the already placed GCL liner in bringing the topsoil to a friable condition.

310.3.4 Topsoil Stockpile Reclamation

Topsoil stockpiles that are located over mined ground or on waste dump areas will have native rock or waste rock at the base. Reclamation of the stockpile area requires leaving approximately 8-inches of the stockpiled topsoil in-place; so the stockpile site can be reclaimed. In addition, stockpile site grading shall provide positive drainage to the area. The topsoil layer which has been left in-place will be worked to a friable condition ready for fertilization and seeding.

END OF SECTION 310

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 400.00 - DEBRIS DISPOSAL

400.1 GENERAL

Work covered under this Section consists of the disposal of all debris, pipes, and ditch liners. Debris shall be defined as but not limited to the remains of any manmade objects found within the excavation zone inside the Construction Limits.

400.2 PRODUCTS

Not applicable.

400.3 EXECUTION

The Contractor shall gather and dispose of all debris. All non-biodegradable materials such as but not limited to wire, metal, pipes, containers, and PVC ditch liners must be taken off-site and disposed of at an approved garbage collection site. There is an approved Phillips County disposal site located just south of Zortman.

Debris exposed at the surface of the final grade within the cut area must be dug out and removed. Disposal will be at an approved garbage collection site.

END OF SECTION 400

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 500.00 – GCL LINER PLACEMENT

500.1 GENERAL

500.1.1 Scope of Work

- A. The CONTRACTOR shall furnish all labor, tools, supplies, and equipment necessary to complete the work as shown on the Drawings, as described herein, and as directed by the ENGINEER.
- B. The compaction of the subgrade is included under this work task.
- D. The CONTRACTOR shall be responsible for placement of the OWNER provided GCL over the designated area.

500.1.2 Site Conditions

It is the responsibility of the CONTRACTOR to examine the site personally and to conduct such additional investigations as he/she may deem necessary for the planning and execution of the work.

500.2 PRODUCTS

The GCL is Bentomat ST which consists of a layer of natural sodium bentonite clay encapsulated between two geotextiles needle punched together and supplied by the OWNER.

The roll dimensions of full-size GCL panels are 150 feet in length and 15 feet in width with a roll weight of 2,700 pounds. The core size is 4-inches. The core is not necessarily intended to support the roll for lifting. The rolls are packaged in 8-mil U.V.-resistant polyethylene sleeves. There is a 6-inch overlap guideline imprinted on both edges of the upper geotextile component of the GCL as a means for providing quality assurance of the overlap dimension. Lines are printed in easily visible, non-toxic ink.

One 50-pound bag of granular bentonite or bentonite sealing compound used for seaming, penetration sealing and repairs, made from the same natural sodium bentonite as used in the GCL, shall be supplied by the OWNER. An additional 20 bags of bentonite will be supplied to assist in placement in the drainage channel area.

The CONTRACTOR is responsible for supplying two 12-foot long chains and a front end loader or forklift for handling the GCL rolls. The lifting equipment must be equipped with a stinger attachment or 18-foot long, 2.5-inch nominal pipe or solid steel pipe for lifting the rolls.

SECTION IV TECHNICAL SPECIFICATIONS

500.3 EXECUTION

500.3.1 Scope

This specification covers the technical requirements for the installation of the geosynthetic clay liner. All materials used shall meet the requirements of this specification, and all work shall be performed in accordance with the procedures provided herein and the contract drawings. The delineation of the placement area shall be field staked prior to installation.

Prior to installation, the CONTRACTOR shall submit certificates of subgrade acceptance, signed by the CONTRACTOR and the ENGINEER for the area that is covered by the GCL.

500.3.2 Storage

- A. A dedicated storage area shall be selected at the job site that is away from high traffic areas and is level, dry and well-drained.
- B. Rolls shall be stored in a manner that prevents sliding or rolling from the stacks and may be accomplished by the use of chock blocks or by use of the dunnage shipped between rolls. Rolls should be stacked at a height no higher than that at which the lifting apparatus can be safely handled (typically no higher than four).
- C. All stored GCL materials and the accessory bentonite must be covered with a plastic sheet or tarpaulin until their installation, which shall be supplied by the CONTRACTOR.
- D. The integrity and legibility of the labels shall be preserved during storage.

500.3.3 Earthwork

- A. Any earthen surface upon which the GCL is installed shall be prepared and compacted. A vibratory compactor capable of delivering a minimum 30,000 pounds of centrifugal force is required. A minimum of 3-passes with the compactor shall be required prior to GCL placement. More passes may be required over the area until the area has been approved by the ENGINEER.

The surface shall be smooth, firm, and unyielding, and free of:

- 1. Vegetation.
- 2. Construction Debris.
- 3. Sticks.
- 4. Sharp rocks.
- 5. Void spaces.
- 6. Ice.
- 7. Abrupt elevation changes.

SECTION IV TECHNICAL SPECIFICATIONS

8. Standing water.
 9. Cracks larger than one-quarter inch (6 mm) in width.
 10. Any other foreign matter that could contact the GCL.
- B. Subgrade surfaces consisting of granular soils or gravel may not be acceptable due to their large void fraction and puncture potential. Subgrade soils should possess a particle size distribution such that at least 80 percent of the soil is finer than a #60 sieve (0.250 mm).
- C. Immediately prior to GCL deployment, the subgrade shall be final-graded to fill in all voids or cracks and then smooth-rolled to provide the best practicable surface for the GCL. At completion of this activity, no wheel ruts, footprints or other irregularities shall exist in the subgrade. Furthermore, all protrusions extending more than one-half inch from the surface shall either be removed, crushed or pushed into the surface with the compactor.
- D. On a continuing basis, the ENGINEER shall certify acceptance of the subgrade before GCL placement.
- E. It shall be the CONTRACTOR's responsibility thereafter to indicate to the ENGINEER any change in the condition of the subgrade that could cause the subgrade to be out of compliance.
- F. At the top of sloped areas of the job site, an anchor trench for the GCL shall be excavated or an equivalent runout shall be utilized in accordance with the project plans and specifications and as approved by the ENGINEER. When utilizing an anchor trench design, the trench shall be excavated and approved by the ENGINEER prior to GCL placement. No loose soil shall be allowed at the bottom of the trench and no sharp corners or protrusions shall exist anywhere within the trench.

500.3.4 GCL Placement

- A. The CONTRACTOR's installer must provide to the ENGINEER satisfactory evidence, through similar experience in the installation of other types of geosynthetics, that the GCL will be installed in a competent, professional manner.
- B. GCL rolls shall be delivered to the working area of the site in their original packaging. Immediately prior to deployment, the packaging should be carefully removed without damaging the GCL. The orientation of the GCL is the white side goes up and the gray side goes down.
- C. Equipment which could damage the GCL shall not be allowed to travel directly on it. If the installation equipment causes rutting of the subgrade, the subgrade must be restored to its originally accepted condition before placement continues.

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- D. Care must be taken to minimize the extent to which the GCL is dragged across the subgrade in order to avoid damage to the bottom surface of the GCL. A temporary geosynthetic subgrade covering commonly known as a slip sheet or rub sheet may be used to reduce friction damage during placement.
- E. The GCL shall be placed so that seams are roughly parallel to the direction of the slope. Seams should be located at least 3 feet (1 m) from the toe and crest of slopes steeper than 4H:1V.
- F. The Drainage Panel shall be constructed with a 1 foot wide longitudinal seam. Overlaps on Drainage Panel sections shall be at least 2 feet wide. Side panel overlaps on the Drainage Panel shall be a minimum of 1 foot wide in any area along the overlap. Any side panel overlap that extends more than 2 feet over the Drainage Panel shall be trimmed parallel with the edge of the Drainage Panel. The trimmed edge shall provide a 2 foot wide overlap.
- G. All GCL panels should lie flat on the underlying surface, with no wrinkles or folds, especially at the exposed edges of the panels.
- H. Only as much GCL shall be deployed as can be covered at the end of the working day with coversoil or a temporary waterproof tarpaulin. The GCL shall not be left uncovered overnight. If the GCL is hydrated when no confining stress is present, it may be necessary to remove and replace the hydrated material. The ENGINEER and GCL supplier should be consulted for specific guidance if premature hydration occurs.

500.3.4.1 Anchorage

As directed by the Drawings and Special Provisions, the end of the GCL roll shall be placed in an anchor trench at the top of the slope or an equivalent runout design shall be utilized. When utilizing an anchor trench design, the front edge of the trench should be rounded so as to eliminate any sharp corners. Loose soil should be removed from the floor of the trench. The GCL should cover the entire trench floor.

500.3.4.2 Seaming

- A. The GCL seams are constructed by overlapping their adjacent edges. Care should be taken to ensure that the overlap zone is not contaminated with loose soil or other debris. Supplemental bentonite is required for Bentomat[®] ST installation.
- B. The minimum dimension of the longitudinal overlap should be 6 inches. End-of-roll overlapped seams should be similarly constructed, but the minimum end-of-roll overlap should measure 24 inches.
- C. Seams at the ends of the panels should be constructed such that they are shingled in the direction of the grade to prevent the potential for runoff flow to enter the overlap zone.

SECTION IV TECHNICAL SPECIFICATIONS

- D. Bentonite-enhanced seams are constructed between the overlapping adjacent panels described above. The underlying edge of the longitudinal overlap is exposed and then a continuous bead of granular sodium bentonite is applied along a zone defined by the edge of the underlying panel and the 6-inch line. A similar bead of granular sodium bentonite is applied at the end-of-roll overlap. The bentonite shall be applied at a minimum application rate of one quarter pound per lineal foot.

500.3.4.3 Detail Work

- A. The GCL shall be sealed around penetrations and embedded structures embedded in accordance with the Drawings and the GCL Manufacturer.
- B. Cutting the GCL should be performed using a sharp utility knife. Frequent blade changes are recommended to avoid damage to the geotextile components of the GCL during the cutting process.

500.3.4.4 Damage Repair

If the GCL is damaged (torn, punctured, perforated, etc.) during installation, it may be possible to repair it by cutting a patch to fit over the damaged area. The patch shall be obtained from a new GCL roll and shall be cut to size such that a minimum overlap of 12 inches is achieved around all of the damaged area. Dry bentonite or bentonite mastic should be applied around the damaged area prior to placement of the patch. It may be desirable to use an adhesive to affix the patch in place so that it is not displaced during cover placement.

500.3.5 Cover Placement

- A. Cover soils shall be free of angular stones or other foreign matter which could damage the GCL. Cover soils should be approved by the ENGINEER with respect to particle size, uniformity and chemical compatibility.
- B. Soil cover shall be placed over the GCL using construction equipment that minimizes stresses on the GCL. A minimum thickness of 1 foot of cover should be maintained between the equipment tires/tracks and the GCL at all times during the covering process.
- C. Soil cover should be placed in a manner that prevents the soil from entering the GCL overlap zones. Cover soil shall be pushed up slopes, not down slopes, to minimize tensile forces on the GCL.
- D. Although direct vehicular contact with the GCL is to be avoided, lightweight, low ground pressure vehicles (such as 4-wheel all-terrain vehicles) may be used to facilitate the installation.

END OF SECTION 500

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 600.00 - DRAINAGE SYSTEM CONSTRUCTION

600.1 GENERAL

- A. Drainage System Construction involves the construction of ditches and drains in the location shown on the Drawings. The drainage channel shall start at the Alder Gulch Waste Rock Dump and drain the area to the southeast, taking the water into the Alder Spur drainage area.
- B. The CONTRACTOR will supply all labor, equipment, and materials required to complete this work.
- C. Construction will conform in all respects with the locations and designs shown on the Drawings.

600.2 PRODUCTS

No products will be required under this specification.

600.3 EXECUTION

600.3.1 General

- A. Protect previous construction from damage while constructing drainage systems. Protect drainage systems from damage during subsequent construction in other areas.
- B. Damage of any kind resulting from lack of proper conduct of the work shall be corrected by the CONTRACTOR at his/her own expense.

600.3.2 Construct Ditches

- A. The CONTRACTOR shall construct drainage ditches in strict accordance with the lines and grades shown on the Drawings and as required for proper functioning. All modifications must be approved by the OWNER.
- B. Match flow lines and provide smooth transitions to avoid falling or ponding water at both inlet and outlet ends of channels.
- C. Construction accuracy for vertical alignment with ditches stakeout points will be plus or minus 0.2 foot.

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600.3.3 Drain Earthwork

- A. The CONTRACTOR shall construct drains in strict accordance with the lines and grades shown on the Drawings or as required for proper functioning. All modifications must be approved by the OWNER.
- B. Form channel and bench sections in accordance with the details shown on the Drawings. Non-typical area will be formed to insure proper functioning of the drain system.

END OF SECTION 600

SECTION IV TECHNICAL SPECIFICATIONS

SUBSECTION 900.00 - REVEGETATION

900.1 GENERAL

900.1.1 Scope of Work

- A. This Work shall consist of furnishing all labor, equipment, and materials to revegetate disturbed areas. Revegetation will include disking, fertilizing, seeding, and raking in accordance with these specifications, and the Drawings.
- B. Materials shall meet the requirements listed in this section. The OWNER may arrange for testing of materials during construction in order to verify quality.

900.1.2 Certifications

- A. The CONTRACTOR must supply the OWNER with all seed tags and a certification from the supplier stating that the seed complies with the Federal Seed Act and the Montana Seed Law (Sections 80-5-120 through 80-5-144, MCA).
- B. Fertilizer shall be delivered in standard size bags of the manufacturer showing weight analysis and manufacturer's name, or in bulk quantities accompanied with written certifications from the manufacturer stating that the fertilizer supplied complies with applicable specifications.

900.2 PRODUCTS

900.2.1 Fertilizer

- A. Fertilizer shall consist of the ratio (nitrogen, phosphorous, potassium) which is specified under the Work Description in the Special Provisions or on the Drawings.
- B. Fertilizer shall be a soluble commercial carrier of available plant nutrients or combination thereof. The fertilizer shall be uniform in composition and in good condition for application by suitable equipment.
- C. Certified weight slips for bulk fertilizer or tags or bags with weight indicated for each bag and a certified copy of the manufacturer's guaranteed analysis (stated in terms of the percentages of nitrogen (N), available phosphorus (P_2O_5) and potash (K_2O) in that order) shall be submitted to the ENGINEER prior to application.
- D. Fertilizer shall be applied at the rate specified under the Work Description in the Special Provisions or on the Drawings.

900.2.2 Indigenous Seed

- A. All seed shall comply with and be labeled in accordance with the Montana Seed Law. Section 80-5-123(1), MCA, requires that each container of indigenous seeds

SECTION IV TECHNICAL SPECIFICATIONS

sold in this state for sowing purposes must bear a conspicuous, unaltered label or tag, plainly written or printed in English. Bulk sales must be accompanied by the required label information which must be given to the seed purchaser. All seeds shall be furnished in containers and each shall be plainly labeled showing:

- Seed kind or variety.
- The full name and address of the seed labeler.
- Germination rate and date of the germination test or a notation of the year for which the seed was packaged for sale.
- Origin of the seed.
- Lot number.

B. In addition to the required label information listed above, and any information required by rules established by the Department of Agriculture, the following information shall either be included on the label or provided to the OWNER:

1. The statement "Labeled only for reclamation purposes";
2. The common name, genus, species and subspecies, when applicable, including the name of each kind of seed present in excess of 5%. When two or more kinds of seed are named on the label, the label shall specify the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage must apply to seed of the kind named. If the name of the variety is given, the name may be associated with the name of the kind. The percentage in this case may be shown as "pure seed" and must apply only to the seed of the variety named;
3. The approximate percentage of viable seed, together with the date of test. When labeling mixtures, the percentage viability of each kind shall be stated;
4. The approximate percentage by weight of pure seed, meaning the freedom of seed from inert matter and from other seed;
5. The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter;
6. The approximate total percentage by weight of other seeds;
7. The name and approximate number of each kind of species of prohibited and restricted noxious weed seeds occurring per pound of seed; and,
8. The full name and address of the person, firm or corporation selling the seed.

SECTION IV TECHNICAL SPECIFICATIONS

- C. As listed in Section 80-5-134(1), MCA of the Montana Seed Law, seed shall contain no "PROHIBITED" noxious seed. The seed shall contain no "RESTRICTED" noxious weed seed in excess of the maximum numbers per pound as specified by Section 80-5-134, MCA, ARM 4.12.3011 or as specified by the appropriate County Weed Board, whichever is more stringent.
- D. The number of seed allowed per pound, for all other noxious weed seed shown on the "restricted list" will be zero.
- E. Seed shall be grown in the North American Continent above 41 degrees north latitude. Known varieties whose origin is above the 41st parallel but grown below are acceptable. All seed shall be standard grade adapted to Montana conditions.
- F. Seeding rates stated are for Pure Live Seed (PLS). Percent PLS is the total of multiplying germination plus dormant or hard seed times the percent purity. Bag tags shall be submitted to the ENGINEER from all seed bags used on the project.
- G. All seed must be in good condition prior to planting. Any seed which has become wet, moldy or otherwise damaged prior to planting shall be replaced at the CONTRACTOR's expense.

900.2.3 Seed Mixture

- A. Seed mixtures and application rates are specified under the Work Description in the Special Provisions.
- B. The specification of Pure Live Seed (PLS) is a method of calculating an amount of seed to be planted which takes into account the variation of seed germination and purity of the seed source.

Pure Live Seed (PLS) = % Germination x % Purity

Example:

A recommended seed mixture requires 15 lbs. PLS of Western Wheatgrass.

Western Wheatgrass germination = 80%

Western Wheatgrass purity = 90%

One pound of bulk seed poundage x 80% x 90% = 0.72 pounds PLS

$\frac{15 \text{ lbs. PLS}}{0.72 \text{ PLS Factor}} = \text{Approximately } 20.9 \text{ pounds of bulk seed required.}$

SECTION IV TECHNICAL SPECIFICATIONS

900.3 EXECUTION

900.3.1 Fertilizer

- A. Fertilizer shall be broadcast by equipment specifically designed for application of granular fertilizer.
- B. Fertilizer should be applied prior to ripping, disking, and seeding.
- C. Incorporate the applied fertilizer by ripping and disking as outlined in these specifications within twelve (12) hours after application to the soil surface.
- D. Fertilizer which is lost from the soil surfaces by wind or water erosion or by any other means, prior to incorporation, shall be replaced at CONTRACTOR's expense. The replacement rate shall be as determined by the ENGINEER.
- E. Fertilizer shall be applied only during daylight hours.

900.3.2 Ripping and Disking

- A. Ripping, disking, and seeding shall only be done under appropriate soil and climatic conditions for agronomic purposes using methods appropriate for the size of area involved. Some conditions which may prevent acceptable soil preparation include: soils too wet; formation of clods during ripping, frozen conditions or soils too dry. The ENGINEER may stop operations if soil conditions are not acceptable.
- B. The ground surface will blend with adjacent topography at the completion of grading and coversoil operations.
- C. Ripping shall be done on all areas to be seeded or as directed by the ENGINEER. Ripping shall be done to a depth of eight inches parallel to the contour at intervals of 12 inches. Depth of ripping will be limited to avoid disturbance of the GCL liner. The CONTRACTOR is advised that ripping of the final surface should be closely coordinated with disking and seeding. Ripping may make the surface more susceptible to moisture absorption and retention, thereby causing delays in subsequent operations.
- D. The CONTRACTOR is advised that pre-ripping of haul roads, staging areas, and other areas with severe compaction may be necessary in order to achieve acceptable agricultural ripping results. Any pre-ripping that may be necessary in these or other areas will be considered subsidiary to ripping.
- E. Disking shall immediately follow ripping of the coversoil to produce a suitable seedbed. Disking shall be done to a minimum depth of eight inches parallel to the contour by using a heavy duty mechanical type double-gang disc with a minimum coulter diameter of twenty-four inches, or any other implement which is suitable for completion of this task and approved by the ENGINEER.

SECTION IV TECHNICAL SPECIFICATIONS

- F. The CONTRACTOR is advised that several passes by the disk may be necessary in order to achieve acceptable soil conditions for seeding as required by these specifications.
- G. Construction equipment shall not be allowed on disked areas except for agronomic activities. Damage of any ripped or disked areas shall be repaired at the CONTRACTOR's expense.
- H. The ripping and disking process shall produce soil texture which is acceptable to the ENGINEER for plant growth.

900.3.3 Seeding

- A. Seeding shall only be done under appropriate soil and climatic conditions for agronomic purposes as determined by the OWNER.
- B. Ripping and disking in accordance with the Specifications shall be done prior to seeding. All equipment marks running up and down slopes will be eliminated and the surface shall be seeded in conformance with the Specifications.
- C. Seed shall be applied to the conditioned seedbed no later than 48 hours after the seedbed has been conditioned.
- D. The applied seed, regardless of the method of application, shall not be covered by a soil thickness greater than ½ inch in depth.
- E. The CONTRACTOR shall proceed with each seeding operation in its proper sequence and in a continuous manner. Any delay in the CONTRACTOR's operations resulting in damage to the prepared slopes or loss of material shall be repaired or replaced at the CONTRACTOR's expense.
- F. The seeding rates specified in the Special Provisions shall be followed.

900.3.4 Seeding by Drill

- A. Seeding equipment used for applying grass seed must be designed, modified or equipped to regulate the application rate and planting depth of grass seed. If equipment for sowing cover crop seed is not equipped with press wheels, the seed shall be compacted with a cultipacker immediately after the ground has been drilled.
- B. Seed must be uniformly distributed in the drill hopper during the drilling operation.
- C. Acceptable drills are: custom seeder, furrow drills, disc drills, no till drills or other drills approved by the OWNER.

SECTION IV TECHNICAL SPECIFICATIONS

- D. All grass establishment equipment shall be operated normal to the slope drainage.
- E. Planting depth shall be regulated by depth bands or coulters. The drill box shall be partitioned by dividers no more than 24 inches apart, in order to provide for more even distribution of sloping areas. A drill shall be no wider than the width of the area over which it is to operate.

900.3.5 Broadcast Seeding

- A. Seeding by hand or mechanical broadcasting will be permitted only on areas that are inaccessible to drills or are impractical to seed by other prescribed methods.
- B. Broadcast seeding requires the OWNER's approval.

900.3.6 Hydraulic Seeding

- A. Hydraulic seeding equipment may be used.
- B. Any slopes or areas requiring hydraulic seed coverage shall be outlined under the Special Provisions.
- C. The CONTRACTOR must provide 1 pound of wood fiber or organic mulch per each 3 gallons of water in the hydraulic seeder as a cushion against seed damage.
- D. The CONTRACTOR will be required to use extension hoses to reach the extremities of slopes.
- E. The CONTRACTOR shall remove any equipment tracks on the seed bed.

900.3.7 Tracking

- A. Areas requiring tracking are noted on the Drawings and in the Special Provisions.
- B. Tracking shall be accomplished using a tracked vehicle equipped with grousers sufficient to groove the surface to at least ½ inch.
 - 1. The tracking vehicle shall be operated so as to completely cover the surface with grouser marks.
 - 2. All grouser marks shall run perpendicular to the slope.
 - 3. The tracking vehicle shall be operated alternatively between forward and reverse on each pass to eliminate damage to the seedbed resulting from 180 degree skid turns.

SECTION IV TECHNICAL SPECIFICATIONS

900.3.8 Time of Seeding

Seeding shall be done as directed by the ENGINEER between October 15 and the time that frost prevents proper seeding or after the frost leaves the ground up to April 20. Seeding operations shall only be done during daylight hours.

900.3.9 Protection of Seeded Areas

The CONTRACTOR shall protect seeded areas from damage by traffic or construction equipment through final acceptance. Any area damaged from these causes will be repaired at the expense of the CONTRACTOR.

END OF SECTION 900

SECTION V:

Project Drawings